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A  
COLLECTION  
  
OF  
  
STATUTES RELATING TO  
INDIA

VOLUME IV

*From 1934 up to the end of 1938*

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PUBLISHED BY MANAGER OF PUBLICATIONS, DELHI  
PRINTED BY MANAGER, GOVERNMENT OF INDIA PRESS, CALCUTTA  
1940

*Price Rs. 6-8 or 10s.*

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PREFACE.

THIS Volume has been prepared on the same lines as Volume III and contains Statutes relating to India from the year 1934 to the year 1938, both inclusive, with amendments made by Statutes received in this Department up to the end of the year 1938.

A short Index has been added at the end.

NEW DELHI ;  
The 22nd January, 1940. }

L. E. JAMES,  
*Assistant Secretary,*  
*Legislative Department.*



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A COLLECTION  
OF  
STATUTES RELATING TO  
INDIA.

VOLUME IV.

THE AIR FORCE RESERVE (PILOTS AND OBSERVERS) ACT, 1934.

(24 & 25 Geo. 5, c. 5.)

*An Act to extend the maximum period of annual training in the case of men of the air force reserve who are serving as pilots or observers, or are qualifying for service as such.*

[28th March, 1934.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

7 & 8 Geo.  
5, c. 51.

1. (1) The power of His Majesty under section six of the Air Force (Constitution) Act, 1917, to apply by Order in Council to the air force reserve, or to the officers and men thereof, any of the enactments relating to the army reserve, or to the officers and men thereof, shall be extended so as to include power so to apply any of those enactments with such modifications as may be necessary to provide that, notwithstanding anything in sub-section (1) of section eleven of the Reserve Forces Act, 1882<sup>1</sup>, the period or periods for which men of the air force reserve who are serving therein as qualified pilots or qualified observers, or are under instruction with a view to qualifying for service as such, may be called out for training shall be such period or periods as may be prescribed, not exceeding in any one year—

Annual training of airman pilots and airman observers of the air force reserve.

45 & 46  
Vict. c. 48.

- (i) in the case of a man who is serving as a qualified pilot or as a qualified observer, twenty-four days ; and
- (ii) in the case of a man who is undergoing instruction with a view to his qualifying for service as a pilot or as an observer, six months :

Provided that nothing in this section shall affect any man who was in the air force reserve at the date of the passing of this Act or any man who was

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<sup>1</sup> See Vol. I of this publication.



*An Act to amend the law with respect to the superannuation benefits of persons who have served in the permanent Civil Service of the State ; to provide for the amendment of section one of the Superannuation Act, 1887, and for the modification or revocation of the rules made under section six of that Act ; and for purposes connected with the matters aforesaid.*

[27th June, 1935.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows :—

9 Edw. 7,  
c. 10.  
4 & 5 Geo. 5,  
c. 86.

1. (1) Sections one and two of the Superannuation Act, 1909, as amended by section two of the Superannuation Act, 1914<sup>1</sup>, and by this Act, shall apply in relation to female civil servants who enter the service after the commencement of this Act, as they apply in relation to male civil servants who entered the service after the nineteenth day of September, nineteen hundred and nine.

Application  
of Super-  
annuation  
Act, 1909,  
to women.

(2) Subject to regulations made by the Treasury, the Treasury may allow any female civil servant who has entered the service before the commencement of this Act, and who, at the commencement of this Act, is under the retiring age, to adopt the provisions of the Superannuation Act, 1909, and in that case there may be granted to her or her legal personal representatives such superannuation and other allowances and gratuity as might be granted had she entered the service after the commencement of this Act, except that the amount of the additional allowance payable on retirement shall be increased by one-half per cent. in respect of each completed year she had served at the commencement of this Act :

Provided that any superannuation or other allowance or gratuity which, by virtue of this sub-section, may be granted to, or in respect of, a female civil servant who has duly signified that she does not desire section four of this Act to apply to her, shall be calculated as if that section had not come into operation.

(3) Section one of the Superannuation Act, 1914<sup>1</sup> (which provides for the distribution of gratuities without probate in certain cases) shall apply in relation to the grant of a gratuity under sub-section (2) of this section as it applies in relation to the grant of a gratuity under section three of the Superannuation Act, 1909.

2. (1) The Treasury may make rules for securing that, in such circumstances and subject to such conditions as to proof of good health and other matters as may be specified in the rules, a retiring officer, that is to say, a person of such a class as may be so specified—

Allocation  
of part of  
superannua-  
tion benefits  
to depen-  
dants.

(a) who, being a civil servant, retires from the service, otherwise than on the ground of ill-health, not earlier than three months after the commencement of this Act, or

<sup>1</sup> See Vol. III of this publication.

- (b) who, having served in the permanent civil service of the State at some time later than three months after the commencement of this Act, retires from some other employment, otherwise than on the ground of ill-health, in such circumstances as qualify him for the grant of a superannuation allowance in respect of his service in the civil service,

shall be allowed to surrender, as from the date of his retirement, in return for the benefits of the rules such part, not exceeding one-third, of any annual superannuation, compensation or retiring allowance which the Treasury may grant to him under the Superannuation Acts, as may be specified in the rules, and for enabling the Treasury to grant either to the wife or husband, as the case may be, or to a dependant of the retiring officer a pension of such value as, according to tables to be prepared from time to time by the Government Actuary is actuarially equivalent, at the said date, to the value of that part of the said annual allowance which is surrendered.

(2) Any such pension as aforesaid for the benefit of a dependant (not being the spouse) of a retiring officer shall be payable in respect of the period, if any, for which the dependant survives the retiring officer, and any such pension as aforesaid for the benefit of the spouse of a retiring officer shall, according as the retiring officer may, in conformity with the rules under this section, elect, be payable either—

- (a) in respect of the period, if any, for which the spouse survives the retiring officer, or
- (b) in respect both of the period of their joint lives subsequent to the retirement and of the period, if any, for which the spouse survives the retiring officer ;

and the rules may provide that a pension payable thereunder in respect of the periods mentioned in paragraph (b) of this sub-section shall be paid at one rate in respect of the first of those periods and at a higher rate in respect of the second.

(3) If any person has, in accordance with rules under this section, surrendered part of a superannuation allowance, then for the purpose of calculating the amount of any gratuity which may be granted to his legal personal representatives under sub-section (2) of section two of the Superannuation Act, 1909, as amended by this Act, the sums paid or payable to him at the time of his death on account of such superannuation allowance shall be deemed to be the sums which would have been so paid or payable but for the surrender ; and if any person has, in accordance with such rules as aforesaid, surrendered part of a superannuation or compensation allowance, then for the purpose of determining whether, any, and, if so, what, amount may be paid to him under section twenty of the Superannuation Act, 1834<sup>1</sup>, by way of such allow-  
 3 & 4  
 Will. 4, c. 24.  
 ance in respect of any period during which, after retiring, he is employed in a public department, the profits of the office from which he retired shall be treated as reduced by the amount surrendered by him as aforesaid.

<sup>1</sup> See Vol. I of this publication.

3. (1) If, as respects any person who, at the time when he becomes a civil servant, is serving the State in an unestablished capacity, his continuous service in such a capacity immediately before his becoming a civil servant began not earlier than the commencement of this Act, his said continuous service shall, as to one-half of the period thereof, be reckoned for the purposes of the Superannuation Acts as service in the capacity of a civil servant : Reckoning of unestablished service.

Provided that for the purpose of computing, in the case of any person, the service to be reckoned as aforesaid, no account shall be taken of any period for which that person has served before attaining the age of eighteen years.

(2) The Treasury may direct—

(a) that, subject to such conditions as they may determine, the service of any person in an unestablished capacity for two or more periods shall, for the purpose of determining whether or not his service in such a capacity is to be reckoned under the preceding sub-section, be treated as if it were continuous service beginning at the commencement of the first of those periods or of such one of them as the Treasury may determine ;

(b) that, subject as aforesaid, discontinuous periods of service in an unestablished capacity shall be aggregated for the purpose of computing the service to be reckoned under the preceding sub-section ;

(c) that, subject as aforesaid, a person admitted into the civil service with a certificate from the Civil Service Commissioners shall, if while the issue of that certificate was under consideration, he was, for any period, serving the State in an unestablished capacity in a post previously recognised by the Treasury as an established post, be treated for the purpose of the preceding sub-section as having become a civil servant at the beginning of the said period, and that his service during that period shall be reckoned for the purposes of the Superannuation Acts as service in the capacity of a civil servant.

50 & 51 Vict.,  
c. 67.

(3) Section three of the Superannuation Act, 1887<sup>1</sup>, shall not apply in relation to any person whose service in an unestablished capacity is to be reckoned under subsection (1) of this section.

(4) In this section the expression “ unestablished capacity ” means employment in the civil service of the State otherwise than in the capacity of a civil servant as defined by section twelve of the Superannuation Act, 1887<sup>1</sup>, being employment to which the person serving therein is required to devote his whole time, and the remuneration for which is paid entirely out of moneys provided by Parliament.

4. (1) This section shall apply to every civil servant who, not earlier than five years after the commencement of this Act, retires from the service or dies while in the service, except— Averaging of salary, etc.

(a) any male person who became a civil servant before the twentieth day of September, nineteen hundred and nine, and who had

<sup>1</sup> See Vol. I of this publication.

not, before the commencement of this Act, adopted the provisions of the Superannuation Act, 1909,

- (b) any female person who became a civil servant before the commencement of this Act, and who has not adopted the provisions of the Superannuation Act, 1909,
- (c) any civil servant who, at the commencement of this Act, had attained the retiring age,
- (d) any male person who was a civil servant at the commencement of this Act, and who has signified in such manner and within such time as the Treasury may direct, that he does not desire this section to apply to him, and
- (e) any female person who was a civil servant at the commencement of this Act, and who has adopted the provisions of the Superannuation Act, 1909, but has signified, in such manner and within such time as the Treasury may direct, that she does not desire this section to apply to her.

(2) Every superannuation allowance, gratuity or additional allowance which, under section two or section six of the Superannuation Act, 1859, or under section one or section two of the Superannuation Act, 1909, may <sup>22 Vict., c. 26.</sup> be granted to, or in respect of, any civil servant to whom this section applies, shall be computed upon the average annual amount of the salary and emoluments of his office during the last three years of his service, and accordingly, in relation to any such civil servant, the Superannuation Acts, 1834 to 1919, shall be modified as follows, that is to say :—

- (a) sections twelve and twenty-eight of the Superannuation Act, 1834<sup>1</sup>, shall cease to have effect, and section two of the Superannuation Act, 1859, shall have effect as if in that section for the words “ the annual salary and emoluments of his office ” there were substituted the words “ the average annual amount of the salary and emoluments of his office during the last three years of his service ” ;
- (b) section six of the Superannuation Act, 1859, shall have effect as if in that section for the words “ the amount of one month’s pay ” there were substituted the words “ one-twelfth of the average annual amount of the salary and emoluments of his office during the last three years of his service ” ; and
- (c) sub-section (2) of section one, and section two, of the Superannuation Act, 1909, shall have effect as if for the words “ the annual salary and emoluments of his office,” wherever those words occur in the said provisions, there were substituted the words “ the average annual amount of the salary and emoluments of his office during the last three years of his service ”.

(3) Sub-section (2) of section one of the Superannuation Act, 1909, and <sup>9 & 10</sup> sub-section (1) of section one of the Superannuation (Prison Officers) Act, <sup>Geo. 5, c. 67.</sup>

<sup>1</sup> See Vol. I of this publication.

1919, (which contain provisions for the calculation of additional allowances on a proportion of salary and emoluments) shall, in relation to any civil servant to whom this section applies, have effect as if the reference in the first-mentioned sub-section to one-thirtieth were a reference to three-eightieths, and as if the reference in paragraph (b) of the last-mentioned sub-section to two-thirtieths were a reference to six-eightieths.

1\*           \*           \*           \*           \*           \*           \*

7. (1) As respects any civil servant who has been a member of His Majesty's Consular Service in China during the whole of his service as such, apart from any service during the late war or during the period of five years immediately preceding the date on which he first entered the said Consular Service, fifty-five years shall be substituted for sixty years as the age on retirement at which without a medical certificate a superannuation allowance may be granted under the Superannuation Acts, and accordingly sections ten and eleven of the Superannuation Act, 1859, shall, in relation to any such civil servant, have effect as if in those sections for the words "sixty years" there were substituted the words "fifty-five years".

*Reduction of retiring age for members of H. M.'s Consular Service in China.*

(2) If at any time His Majesty's Consular Service in China ceases to be a separate branch of His Majesty's Consular Service, the preceding sub-section shall cease to have effect, except that it shall continue to apply to any person being at that time a member of the first-mentioned Consular Service, as if he had remained a member thereof during the period of any service spent by him after that time in His Majesty's Consular Service at any place (whether in or outside China) at which, immediately before the cessation aforesaid, persons appointed to His Majesty's Consular Service in China were required to serve.

(3) In this section the expression "a member of His Majesty's Consular Service in China" means a person holding, by virtue of his appointment to His Majesty's Consular Service in China, an office at any place (whether in or outside China) at which persons appointed to that Consular Service may for the time being be required to serve.

8. (1) Where any person who, being a civil servant, has (whether before or after the commencement of this Act) been transferred to approved employment with the consent of the head officer of his department, retires from that employment on the ground of age before attaining the age of sixty years, and is, on such retirement, qualified for, or entitled to, the benefits of any system of superannuation applicable to the approved employment, the Treasury may either—

*Approved employment.*

- (a) grant to him, on his attaining the age of sixty years, such superannuation allowance, additional allowance or gratuity as might have been granted to him if, at the date of the transfer, he had retired from the civil service on the ground of ill-health, or

<sup>1</sup> Sections 5 and 6 are repealing and amending provisions and have not been reprinted.



- (b) grant to him, within six months after the date of his retirement from the approved employment (if requested by him so to do), such superannuation allowance, additional allowance or gratuity as the Treasury consider to be actuarially equivalent, at the said date, to the superannuation allowance, additional allowance or gratuity, as the case may be, which might be granted to him under paragraph (a) of this sub-section.

(2) Where a civil servant who, after the commencement of this Act, is transferred to approved employment with the consent of the head officer of his department, dies while in that employment, and no provision is made, under any system of superannuation applicable to the approved employment, for the grant of pensions to widows or dependants of persons dying while in that employment, the Treasury may grant to his legal personal representatives such gratuity, if any, as might have been granted to them if he had died on the day before the day of the transfer, after deducting therefrom the total amount of any sums paid or payable, under such a system of superannuation, in respect of his death.

(3) Where a civil servant who, having served as such for not less than five years, is, after the commencement of this Act, transferred to approved employment with the consent of the head officer of his department, dies after retiring from that employment in circumstances which qualified him for the grant of a superannuation allowance and an additional allowance under section four of the Superannuation Act, 1914<sup>1</sup>, or under sub-section (1) of this section, then if—

- (a) no provision is made, under any system of superannuation applicable to the approved employment, for the grant of pensions to widows or dependants of persons who die after retiring from that employment, and

- (b) the sums paid or payable to him at the time of his death on account of the said superannuation allowance and additional allowance, together with any sums paid or payable to him, his legal personal representatives and his widow or dependants under such a system of superannuation, are less than the annual amount of salary and emoluments upon which the said superannuation allowance and additional allowance have been computed,

the Treasury may grant to his legal personal representatives a gratuity equal to the difference.

(4) In this section the expression “ approved employment ” has the same meaning as in section four of the Superannuation Act, 1914<sup>1</sup>.

Superannua-  
tion of  
persons  
transferring]  
from or to  
local  
authority  
service to  
or from Civil  
Service.

9. (1) Within twelve months after the commencement of this Act the Treasury may, after consultation with the Minister of Health and with the Secretary of State for Scotland, make rules with respect to the superannuation benefits of persons who, being pensionable officers or servants of a local authority to which the rules apply, become civil servants, or who, being civil servants, become pensionable officers or servants of such a local authority.

<sup>1</sup> See Vol. III of this publication.

(2) Rules under this section may provide, as respects any person who, being a pensionable officer or servant of a local authority to which the rules apply, becomes a civil servant in such circumstances as may be specified in the rules,—

- (a) that the Superannuation Acts shall, in relation to the said person, have effect subject to such modifications as may be prescribed by the rules with respect to the minimum periods of service which qualify persons for the benefits of those Acts, and with respect to the gratuity which may be granted under sub-section (2) of section two of the Superannuation Act, 1909 ; and
- (b) that on his retirement from the civil service of the State in such circumstances as qualify him for the grant of an annual superannuation, compensation or retiring allowance under the Superannuation Acts as modified by the rules, he shall be qualified or entitled, in respect of his pensionable local authority service, to receive from the local authority such payments by way of annual allowance, lump sum or return of contributions (with or without interest) as may be prescribed by the rules :

Provided that nothing in any rules made in pursuance of this sub-section shall affect the superannuation benefits of any person who, being an officer or servant of a local authority with respect to which rules under section fifty-one of the Unemployment Act, 1934, are in force, becomes an officer or servant of the Unemployment Assistance Board.

24 &amp; 25

Geo. 5, c. 29.

(3) Rules under this section may provide, as respects any person who, being a civil servant, becomes, in such circumstances as may be specified in the rules, a pensionable officer or servant of a local authority to which the rules apply,—

- (a) that the enactments relating to the superannuation of officers or servants of that local authority or any other such local authority as aforesaid of which the said person subsequently becomes a pensionable officer or servant shall, in relation to him, have effect subject to such modifications as may be prescribed by the rules with respect to the minimum periods of service which qualify persons for, or entitle them to, the benefits of the said enactments ; and
- (b) that on his retirement from the service of such a local authority as aforesaid in such circumstances as qualify or entitle him to receive from that local authority an annual superannuation allowance, the Treasury may grant to him, in respect of his service in the capacity of a civil servant, such superannuation allowance and additional allowance, if any, as may be prescribed by the rules.

(4) Rules under this section may provide for such further modifications of the enactments relating to the superannuation of officers and servants of a local authority as may be necessary for giving effect to the rules.

(5) Any rules under this section shall apply to a local authority if, but only if, the Treasury, upon the application of that local authority, have directed that the rules shall apply to it.

(6) In this section—

(a) the expression “local authority” means any body having power to levy a rate or to issue a precept to a rating authority; and “rate” and, except in relation to London, “rating authority” have respectively the same meanings as in the Rating and Valuation Act, 1925;

15 & 16  
Geo. 5, c. 90.

(b) the expression “pensionable officer or servant” means, in relation to a local authority, any officer or servant of that local authority whose service qualifies or entitles him, or would if it continued for a sufficient period qualify or entitle him, to receive from the local authority, on retiring from its service, an annual superannuation allowance, and the expression “pensionable local authority service” has the meaning assigned to that expression by section fifty-one of the Unemployment Act, 1934; and

(c) the expression “enactments” includes, in relation to a local authority, any scheme relating to the superannuation of officers or servants of that local authority made under or in pursuance of any enactment.

(7) In the application of this section to Scotland for the definition of “local authority” the following definition shall be substituted:—

“local authority” has the same meaning as in the Local Authorities Loans (Scotland) Act, 1891.

54 & 55 Vict.,  
c. 34.

Application  
of Super-  
annuation  
Acts to  
officers in  
institutions  
maintained  
by Board  
of Control.

**10.** Section one of the Superannuation (Prison Officers) Act, 1919, shall, in relation to civil servants who, after the commencement of this Act, retire from the service or die while in the service, have effect as if the reference in that section to officers employed in prisons and criminal lunatic asylums of such classes as the Secretary of State with the approval of the Treasury may from time to time prescribe, included a reference to officers employed in institutions maintained by the Board of Control under sections twenty-five and thirty-five of the Mental Deficiency Act, 1913, being officers of such classes as the Minister of Health, with the approval of the Treasury, may from time to time prescribe.

c. 28.

Gratuity or  
allowance  
in case of  
injury.

**11.** Section one of the Superannuation Act, 1887<sup>1</sup>, shall have effect—

(1) in relation to persons injured after the commencement of this Act, as if in sub-section (1) of that section—

(a) there were substituted for the words “or, if he dies from the injury” the words “and, if, within seven years after the date of the injury, he dies as a direct result thereof”, and

<sup>1</sup> See Vol. I of this publication.

(b) the reference to the widow of the person injured included, in a case where that person is a female, a reference to her widowed husband, and

(c) the expression "children" included illegitimate children and step-children, and children adopted by the injured person in pursuance of an adoption order made under the Adoption of Children Act, 1926, the Adoption of Children (Scotland) Act, 1930, or any corresponding enactment of the Parliament of Northern Ireland, or adopted by that person in accordance with the law of the place where he was domiciled at the time of the injury; and

(2) in relation to persons injured after the end of June, nineteen hundred and thirty-four, as if for sub-section (3) of that section there were substituted the following sub-section:—

"(3) Any allowance granted under this section to an injured person shall not, together with any superannuation allowance for which he is otherwise qualified, exceed five-sixths of the annual salary and emoluments of the office held by him at the date of the injury.

In this sub-section the expression 'superannuation allowance' includes, in relation to any person, an annual compensation or retiring allowance under the Superannuation Acts, and the annuity value of any additional allowance under those Acts, the said value being computed in accordance with the tables for immediate life annuities framed under Part II of the Government Annuities Act, 1929, which were in force at the time of his retirement."

12. (1) Any annual superannuation, compensation or retiring allowance granted under the Superannuation Acts, 1834 to 1919, to a civil servant who retired from the service during the period between the end of August, nineteen hundred and thirty-one, and the beginning of July, nineteen hundred and thirty-four, may be increased by the Treasury to the amount which might have been granted by way of such allowance if—

Adjustment  
of super-  
annuation  
benefits in  
relation to  
bonus.

(a) any cost-of-living bonus received by him under the Civil Service Bonus Scheme in respect of the last three years of his service had been the bonus related to the cost-of-living figure applicable, in accordance with that scheme, to the month of June, nineteen hundred and thirty-one, and

(b) any other bonus received by him under the authority of the Treasury in respect of service in any office after the end of September, nineteen hundred and thirty-one, had been paid to him at the rate appropriate to service in that office during the month of July, nineteen hundred and thirty-four.

(2) Any annual allowance granted by virtue of section one of the Superannuation Act, 1887<sup>1</sup>, as amended by section five of the Superannuation Act,

16 & 17  
Geo. 5, c. 29.  
20 & 21  
Geo. 5, c. 37.

19 & 20  
Geo. 5, c. 29.

<sup>1</sup> See Vol. I of this publication.

1909, in respect of an injury sustained during the period between the end of August, nineteen hundred and thirty-one, and the beginning of July, nineteen hundred and thirty-four, by a person who, at the date of the injury, was in receipt of a cost-of-living bonus under the Civil Service Bonus Scheme, may be increased by the Treasury to the amount which might have been granted by way of such allowance if the said bonus had been the bonus related to the cost-of-living figure applicable, in accordance with that scheme, to the month of June, nineteen hundred and thirty-one.

(3) Any annual allowance granted by virtue of section one of the Superannuation Act, 1887<sup>1</sup>, as amended by section five of the Superannuation Act, 1909, in respect of an injury sustained during the period between the end of September, nineteen hundred and thirty-one, and the beginning of July, nineteen hundred and thirty-four, by a person who, at the date of the injury, was in receipt of a bonus payable under the authority of the Treasury (other than a cost-of-living bonus under the Civil Service Bonus Scheme) may be increased by the Treasury to the amount which might have been granted by way of such allowance if the first-mentioned bonus had been paid to him at the rate appropriate to service during the month of July, nineteen hundred and thirty-four, in the office held by him at the date of the injury.

(4) Where, for the purpose of computing any superannuation allowance, compensation allowance, retiring allowance, additional allowance or gratuity which has been or may be granted under the Superannuation Acts to, or in respect of, a civil servant who, after the end of June, nineteen hundred and thirty-four, has retired from the service or died while in the service, there has been or has to be taken into account any cost-of-living bonus received by him under the Civil Service Bonus Scheme or any other bonus received by him under the authority of the Treasury, the amount of the allowance or gratuity may be re-calculated or calculated, as the case may be, by the Treasury and paid as if—

- (a) the bonus under the Civil Service Bonus Scheme had been the bonus related to the cost-of-living figure applicable, in accordance with that scheme, to the month of June, nineteen hundred and thirty-one, or (as the case may be) ;
- (b) the other bonus (in so far as it was paid to him in respect of service in any office after the end of September, nineteen hundred and thirty-one) had been paid at the rate appropriate to service in that office during the month of July, nineteen hundred and thirty-four.

(5) Where, under sub-section (1), sub-section (3) or sub-section (4) of this section, the amount of any annual allowance which has been or may be granted to, or in respect of, any person has been or may be computed as if a bonus received by him in respect of service in any office had been paid to him at the rate appropriate to service in that office during the month of July, nineteen hundred and thirty-four, then if, after the commencement of this Act, the Treasury give a general direction whereby the aforesaid bonus in respect

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<sup>1</sup> See Vol. I of this publication.

of service in that office becomes payable at a higher rate than the first-mentioned rate, the amount of the allowance may be re-calculated or calculated, as the case may be, by the Treasury and paid as if that bonus (in so far as it was paid to the said person in respect of service after the end of September, nineteen hundred and thirty-one) had been paid at the said higher rate or, if that rate exceeds the rate appropriate to service in the said office during the month of September, nineteen hundred and thirty-one, at the last-mentioned rate.

The preceding provisions of this sub-section shall apply in relation to any lump sum that may be granted by way of additional allowance or gratuity to or in respect of a civil servant who, after the said general direction of the Treasury takes effect, retires from the service or dies while in the service, as those provisions apply in relation to an annual allowance.

(6) Any annual allowance which, in consequence of a general direction of the Treasury, is increased under the last preceding sub-section shall be payable at the increased rate as from the date on which the direction takes effect or the date of the retirement of the person concerned, whichever is the later; but, save as aforesaid, any annual allowance which is increased under this section shall be deemed to have become payable at the increased rate as from the first day of July, nineteen hundred and thirty-four, or the date of the retirement of the person concerned, whichever is the later.

(7) In this section the expression "the Civil Service Bonus Scheme" means the scheme for the payment of a cost-of-living bonus related to cost-of-living figures to persons employed in the civil service, which operated in respect of the period between the end of February, nineteen hundred and twenty, and the beginning of July, nineteen hundred and thirty-four.

**13.** For the removal of doubts it is hereby declared that any reference in the Superannuation Acts to the salary and emoluments of an office is, as regards any period in respect of which any temporary abatement from the salary and emoluments fixed for that office has been made under a general direction of the Treasury for the purpose of effecting economy in national expenditure, a reference to the salary and emoluments which would have been payable to the holder of the office but for that abatement; and section twelve of the Superannuation Act, 1834<sup>1</sup>, and section six of the Superannuation Act, 1859, shall, in their application to any person from whose salary and emoluments any temporary abatement has been so made as aforesaid, have effect, and be deemed always to have had effect, as if any reference in the first-mentioned section to the salary enjoyed or the salary received by him, and any reference in the last-mentioned section to pay, were references to the salary and emoluments of his office.

Disregard,  
for super-  
annuation  
purposes,  
of certain  
abatements  
from  
salaries.

Nothing in this section shall be taken to affect the operation of the last preceding section.

**14.** (1) Any reference in any enactment passed before the commencement of this Act, except sub-section (2) of section fifty-five of the Government of Ireland Act, 1920, to the Superannuation Acts, 1834 to 1919, or to

Amendment  
of certain  
enactments  
referring to  
Superannua-  
tion Acts.

<sup>1</sup> See Vol. I of this publication.

any group of Acts included among the Acts which may be cited together as the Superannuation Acts, 1834 to 1919, shall be construed as a reference to the Superannuation Acts :

Provided that section four of this Act shall not apply to a person holding—

- (a) any of the offices specified in Part I of the Third Schedule to the Supreme Court of Judicature (Consolidation) Act, 1925, or 15 & 16 Geo. 5, c. 49.
- (b) the office of registrar of the district registry of the High Court at Liverpool or Manchester, or
- (c) the office of a whole-time registrar within the meaning of the County Courts Act, 1924, or of the County Courts Act, 1934, 14 & 15 Geo. 5, c. 17.  
24 & 25 Geo. 5, c. 53.

not being a person in whose case any superannuation allowance that may be granted on retirement is to be calculated in accordance with the provisions of the Superannuation Acts.

(2) Paragraph 4 of Part IV of the Third Schedule to the Supreme Court of Judicature (Consolidation) Act, 1925, shall have effect, and be deemed always to have had effect, as if in that paragraph for the words “ actually received by him up to the time of his death ” there were substituted the words “ paid or payable to him at the time of his death ”.

Modification  
or revocation  
of rules made  
under s. 6 of  
Superannua-  
tion Act,  
1887.

**15.** (1) The Treasury may make rules modifying or revoking the rules made under section six of the Superannuation Act, 1887<sup>1</sup>, as modified under any subsequent Act (hereinafter referred to as “ the existing rules ”); and the power of the Treasury under the preceding provisions of this section shall extend to the making of rules consolidating, with or without modifications, the existing rules and any rules made under this section.

(2) So much of sub-section (2) of section six of the Superannuation Act, 1887<sup>1</sup>, as requires the rules under that section to provide for the laying before Parliament of the returns of such officers accepting employment as are affected by the rules, is hereby repealed.

Laying of  
rules before  
Parliament.

**16.** Any rules made by the Treasury under this Act shall, as soon as may be after the making thereof, be laid before Parliament.

Definition of  
“ retiring  
age ” and  
“ Super-  
annuation  
Acts ”.

**17.** In this Act the expression “ the retiring age ” means, in relation to any civil servant, the age which, in accordance with section ten of the Superannuation Act, 1859, as amended by, or by virtue of, the Superannuation (Prison Officers) Act, 1919, or this Act, that civil servant must attain in order that a superannuation allowance may be granted to him on retirement without a medical certificate, and the expression “ the Superannuation Acts ” means the Superannuation Acts, 1834 to 1919, and this Act.

Short title,  
citation,  
construction  
and extent.

**18.** (1) This Act may be cited as the Superannuation Act, 1935, and the Superannuation Acts, 1834 to 1919, and this Act may be cited together as the Superannuation Acts, 1934 to 1935; and the Superannuation Act, 1914, and this Act shall be construed as one with the Superannuation Acts, 1834 to 1909.

(2) His Majesty may, by an Order in Council made in pursuance of a Resolution passed by both Houses of the Parliament of Northern Ireland, direct

<sup>1</sup> See Vol. I of this publication.

that this Act or any provisions thereof shall, subject to such exceptions and adaptations as may be specified in the Order, apply to existing Irish officers within the meaning of the Government of Ireland Act, 1920, to whom the Superannuation Acts, 1834 to 1914, apply by virtue of sub-section (2) of section fifty-five of that Act; but save as aforesaid this Act shall not apply to any of the said officers.

THE FINANCE ACT, 1935.

(25 & 26 Geo. 5, c. 24.)

*An Act to grant certain duties of Customs and Inland Revenue (including Excise), to alter other duties, and to amend the law relating to Customs and Inland Revenue (including Excise) and the National Debt, and to make further provision in connection with finance.*

[10th July, 1935.]

MOST GRACIOUS SOVEREIGN,

WE, Your Majesty's most dutiful and loyal subjects the Commons of the United Kingdom in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.

\* \* \* \* \*

8. (1) There shall be charged on the importation into the United Kingdom of rice in the husk a duty of customs at the rate of two-thirds of a penny per pound, and the Ottawa Agreements Act, 1932<sup>1</sup>, shall have effect as if the said duty were chargeable under section one of that Act: Customs duty on rice in the husk.

Provided that sub-section (2) of the said section one shall not apply in relation to the said duty, but the foregoing provisions of this section shall be deemed not to be in force at any time when the agreement between His Majesty's Government in the United Kingdom and the Government of India, set out in Part VI of the First Schedule to the said Act, is not in force within the meaning of that Act.

(2) This section shall be deemed to have had effect as from the sixteenth day of April, nineteen hundred and thirty-five.

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<sup>1</sup> See Vol. III of this publication.



THE GOVERNMENT OF INDIA (REPRINTING) ACT, 1935.

(26 Geo. 5 & 1 Edw. 8, c. 1.)

*An Act to divide the Government of India Act, 1935, into two portions and to make in the wording thereof certain changes which either are consequential on the division or remove minor errors ; to provide for the certification, the deposit with the Rolls of Parliament, and the printing, of the said portions as if they were separate Acts of Parliament ; to secure that the said portions have effect in lieu of the said Government of India Act, 1935, as from the date of the passing of that Act ; and for purposes connected with the matters aforesaid.*

[20th December, 1935.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Division of  
Government  
of India  
Act, 1935,  
into two  
portions.

1. (1) The Clerk of the Parliaments shall forthwith prepare two documents containing respectively—

- (a) a copy of the provisions of the Government of India Act, 1935, 25 & 26 mentioned in Part I of the First Schedule to this Act, with the changes of wording mentioned in Part II of that Schedule, Geo. 5, c. 42.
- (b) a copy of the provisions of the said Act mentioned in Part I of the Second Schedule to this Act with the changes of wording mentioned in Part II of that Schedule,

and shall certify each of the said documents as if it were a separate Act of the present Session and deposit them with the Rolls of Parliament, and the said documents shall be printed as separate Acts by the Printers to His Majesty as Chapters of the statutes of the present Session distinguished respectively by the two numbers next following the number of the Chapter assigned to this Act.

(2) The date to be endorsed on the said documents by the Clerk of the Parliaments under the Acts of Parliament (Commencement) Act, 1793, shall 33 Geo. 3, be the second day of August, nineteen hundred and thirty-five (being the c. 13. date of the passing of the Government of India Act, 1935), and the said documents shall be deemed to be Acts of Parliament which received the Royal Assent on that date, and shall have effect as such and as if the said Government of India Act, 1935, had never been passed, and anything done before the certification of the said documents under any provision of that Act to which a provision of either of the said documents corresponds shall be deemed to have been done under that corresponding provision.

(3) References in any Act or other document, to the Government of India Act, 1935 (not being references contained in this section) shall, in the absence

of express provision to the contrary, be construed as references to the document mentioned in paragraph (a) of sub-section (1) of this section.

2. This Act may be cited as the Government of India (Reprinting) Act, **Short title.** 1935.

## SCHEDULES.

### FIRST SCHEDULE.

#### PART I.

##### PROVISIONS TO BE REPRINTED.

The whole Act down to the end of Part XIII ;

Part XV ;

The first nine Schedules ;

The Sixteenth Schedule.

#### PART II.

##### CHANGES OF WORDING.

In sub-section (4) of section seventy-one, for the words “ of India ” there shall be substituted the words “ in India ”.

In sub-section (1) of section ninety-five, the words “ through the Chief Commissioner ” shall be omitted.

In the marginal note to section one hundred and three, for the word “ legalise ” there shall be substituted the word “ legislate ”.

In sub-section (2) of section two hundred and twenty-five, the comma after the word “ made ” shall be deleted and a comma shall be inserted after the word “ except ”.

In section two hundred and fifty-three, after the words “ notwithstanding anything in this Act,” in both places where those words occur, there shall be inserted the words “ or the Government of Burma Act, 1935 ”.

In sub-section (2) of section two hundred and sixty-four, the first “ that ” shall be transposed so as to follow “ (a) ”.

In sub-section (2) of section two hundred and eighty-two, after the words “ the operation of this Act ” there shall be inserted the words “ or the Government of Burma Act, 1935,”.

In sub-section (5) of section three hundred and eleven, after the words “ the provisions of this Act ” there shall be inserted the words “ or the Government of Burma Act, 1935 ”.

Part XV shall be renumbered Part XIV.

Section four hundred and seventy-seven shall be renumbered section three hundred and twenty, and in sub-section (2) thereof the words “and referred to in Part XIV of this Act as the commencement of that Part” shall be omitted.

Section four hundred and seventy-eight shall be renumbered section three hundred and twenty-one; and in it, for the word “Sixteenth” there shall be substituted the word “Tenth,” after the words “provisions of this Act” there shall be inserted the words “to the provisions of the Government of Burma Act, 1935,” and after the words “under this Act” there shall be added the words “or the Government of Burma Act, 1935”

In the Second Schedule, for the words—

“ Part XIII	.	.	.	.	.	The whole Part.
Part XIV	.	.	.	.	.	” ” ”

there shall be substituted the words—

“ Part XIII	.	.	.	.	.	The whole Part.”
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and for the words—

“ Eighth Schedule	.	.	.	.	.	The whole Schedule.
Ninth Schedule	.	.	.	.	.	” ”
Tenth Schedule	.	.	.	.	.	” ”
Eleventh Schedule	.	.	.	.	.	” ”
Twelfth Schedule	.	.	.	.	.	” ”
Thirteenth Schedule	.	.	.	.	.	” ”
Fourteenth Schedule	.	.	.	.	.	” ”
Fifteenth Schedule	.	.	.	.	.	” ”
Sixteenth Schedule	.	.	.	.	.	” ” ”

there shall be substituted the words—

“ Eighth Schedule	.	.	.	.	.	The whole Schedule.
Ninth Schedule	.	.	.	.	.	” ”
Tenth Schedule	.	.	.	.	.	” ” ”

In sub-paragraph (2) of paragraph eleven of Part II of the Sixth Schedule, for the words “if they had been made by or on him solely” there shall be substituted the words “if they had been held or made by, or made on, him solely”.

In sub-paragraph (a) of paragraph three of Part IX of the Sixth Schedule, the words “in the Province” shall be omitted.

In item 39 of List I in the Seventh Schedule, for the comma after the words “as the case may be” there shall be substituted a semi-colon.

The Sixteenth Schedule shall be renumbered the Tenth Schedule, and the marginal reference to section four hundred and seventy-eight shall be altered so as to be a reference to section three hundred and twenty-one.

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## SECOND SCHEDULE.

### PART I.

#### PROVISIONS TO BE REPRINTED.

Part XIV and the Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth and Fifteenth Schedules.

### PART II.

#### CHANGES OF WORDING.

At the beginning there shall be inserted the following words :

“ An Act to make further provision for the government of Burma.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

### PART I.

#### INTRODUCTORY.

1. This Act may be cited as the Government of Burma Act, 1935.”  
and the words—

Short title.

### “ PART XIV.

#### BURMA.

#### CHAPTER I.

#### INTRODUCTORY.”

shall be omitted.

Throughout the remainder of the provisions to be reprinted :—

- (a) the sections shall be renumbered consecutively beginning with the number 2, the Schedules shall be renumbered I to VI, and references to those sections and Schedules shall be altered accordingly ;

- (b) the chapters shall become Parts, bearing the same numbers as before, and in any reference to any of those chapters, there shall be substituted for the word "chapter," when it is immediately preceded by the word "this," the words "Part of this Act," and when it is immediately preceded by any other word, the word "Part" ;
- (c) for the words "this Part of this Act", "this Part of the Act" and "Part XIV of this Act" there shall, except in section four hundred and forty, be substituted the words "this Act" ;
- (d) for the words "if this Act had not been passed" there shall be substituted the words "if neither this Act nor the Government of India Act, 1935, had been passed" .

In sub-section (1) of section three hundred and twenty, after the word "exercisable," where it first occurs, there shall be inserted the words "by him"

In proviso (ii) to sub-section (2) of section three hundred and twenty-two, for the words "first section of this chapter" there shall be substituted the words "last preceding section" .

In paragraph (c) of sub-section (2) of section three hundred and ninety-two and in sub-section (6) of section four hundred and fifty-one, for the words "by this Act" there shall be substituted the words "by the Government of India Act, 1935," .

In sub-section (1) of section four hundred and thirty-four, for the words "coming into operation" there shall be substituted the word "commencement" .

In section four hundred and thirty-six, for the words "the provisions of this Act relating to India," there shall be substituted the words "the Government of India Act, 1935," .

In section four hundred and forty-six, after the words "so far as consistent with this Act" there shall be inserted the words "and the Government of India Act, 1935," .

In section four hundred and fifty-two, after the words "this Act" there shall be inserted the words "and the Government of India Act, 1935," .

In sub-section (1) of section four hundred and seventy-six, after the definition of "British Burma" there shall be inserted the following words :—

" 'Secretary of State in Council' means Secretary of State in Council of India ; "

and after the definition of "existing Indian or Burman law" there shall be inserted the following words :—

" 'goods' includes all materials, commodities and articles ;

" 'Governor-General in Council' means Governor-General of India in Executive Council ' .

In sub-section (3) of section four hundred and seventy-six, for the words "Part XII of this Act" there shall be substituted the words "Part XII of the Government of India Act, 1935," and for the words "the provisions of this Act" there shall be substituted the words "the provisions of that Act and this Act".

In sub-section (5) of section four hundred and seventy-six, for the words "Part III of this Act" there shall be substituted the words "Part III of the Government of India Act, 1935".

After sub-section (5) of section four hundred and seventy-six, there shall be inserted the following sub-section :—

"(6) While any such agreement as is mentioned in section forty-seven of the Government of India Act, 1935, is in force, any reference in this Act to subjects of His Majesty shall be deemed to include a reference to Berari subjects of His Exalted Highness the Nizam of Hyderabad".

At the end of section four hundred and seventy-six there shall be added the following section :—

"159. This Act shall, subject to any express provision to the contrary, come into force on such date as His Majesty in Council may appoint under the Government of India Act, 1935, as the date of the commencement of Part III of that Act : Commence-

Provided that if it appears to His Majesty in Council that it will not be practicable or convenient that all the provisions of this Act shall come into operation simultaneously on that date, His Majesty in Council may fix an earlier or a later date for the coming into operation, either generally or for particular purposes, of any particular provisions of this Act."

In sub-paragraph (1) of paragraph twelve of the Twelfth Schedule, for the words "the Acts repealed by this Act" there shall be substituted the words "the Acts repealed by the Government of India Act, 1935".

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GOVERNMENT OF INDIA ACT, 1935.

(26 Geo. 5 & 1 Edw. 8, c. 2.)

ARRANGEMENT OF SECTIONS

PART I.

INTRODUCTORY.

SECTION.

1. Short title.
2. Government of India by the Crown.

## SECTION.

3. The Governor-General of India and His Majesty's Representative as regards relations with Indian States.
4. The Commander-in-Chief in India.

## PART II.

## THE FEDERATION OF INDIA.

## CHAPTER I.

## ESTABLISHMENT OF FEDERATION AND ACCESSION OF INDIAN STATES.

5. Proclamation of Federation of India.
6. Accession of Indian States.

## CHAPTER II.

## THE FEDERAL EXECUTIVE.

*The Governor-General.*

7. Functions of Governor-General.
8. Extent of executive authority of the Federation.

*Administration of Federal Affairs.*

9. Council of ministers.
10. Other provisions as to ministers.
11. Provisions as to defence, ecclesiastical affairs, external affairs and the tribal areas.
12. Special responsibilities of Governor-General.
13. Provisions as to Instrument of Instructions.
14. Superintendence of Secretary of State.
15. Financial adviser to Governor-General.
16. Advocate-General for Federation.
17. Conduct of business of Federal Government.

## CHAPTER III.

## THE FEDERAL LEGISLATURE.

*General.*

18. Constitution of the Federal Legislature.
19. Sessions of the Legislature, prorogation and dissolution.

SECTION.

20. Right of Governor-General to address, and send messages to, Chambers.
21. Rights of ministers, counsellors and Advocate-General as respects Chambers.
22. Officers of Chambers.
23. Voting in Chambers, power of Chambers to act notwithstanding vacancies, and quorum.

*Provisions as to Members of Legislature.*

24. Oath of members.
25. Vacation of seats.
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THE GOVERNMENT OF INDIA ACT, 1935.

26 Geo. 5 & 1 Edw. 8, c. 2.

[Being the Government of India Act, 1935 (25 & 26, Geo. 5, c. 42) as reprinted in pursuance of the Government of India (Reprinting) Act, 1935 (26 Geo. 6 & 1 Edw. 8, c. 1).]

*An Act to make further provision for the Government of India.*

[2nd August 1935.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in

this present Parliament assembled, and by the authority of the same, as follows :—

## PART I.<sup>1</sup>

### INTRODUCTORY.

Short title.

1. This Act may be cited as the Government of India Act, 1935.

Government  
of India  
by the  
Crown.

2. (1) All rights, authority and jurisdiction heretofore belonging to His Majesty the King, Emperor of India, which appertain or are incidental to the Government of the territories in India for the time being vested in him, and all rights, authority and jurisdiction exercisable by him in or in relation to any other territories in India, are exercisable by His Majesty, except in so far as may be otherwise provided by or under this Act, or as may be otherwise directed by His Majesty :

Provided that any powers connected with the exercise of the functions of the Crown in its relations with Indian States shall in India, if not exercised by His Majesty, be exercised only by, or by persons acting under the authority of, His Majesty's Representative for the exercise of those functions of the Crown.

(2) The said rights, authority and jurisdiction shall include any rights, authority or jurisdiction heretofore exercisable in or in relation to any territories in India by the Secretary of State, the Secretary of State in Council, the Governor-General, the Governor-General in Council, any Governor or any Local Government, whether by delegation from His Majesty or otherwise.

The Governor-General  
of India  
and His  
Majesty's  
Representative  
as  
regards relations  
with  
Indian  
States.

3. (1) The Governor-General of India is appointed by His Majesty by a Commission under the Royal Sign Manual and has—

(a) all such powers and duties as are conferred or imposed on him by or under this Act ; and

(b) such other powers of His Majesty, not being powers connected with the exercise of the functions of the Crown in its relations with Indian States, as His Majesty may be pleased to assign to him.

(2) <sup>2</sup>[His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States] is appointed by His Majesty in like manner and has such powers and duties in connection with the exercise of those functions (not being powers or duties conferred or imposed by or under this Act on the Governor-General) as His Majesty may be pleased to assign to him.

<sup>1</sup> Part I came into force on the 1st April, 1937, see the Government of India (Commencement and Transitory Provisions) Order, 1936, para. 3.

<sup>2</sup> The office described in the words within square brackets is known as "Crown Representative", see Notification No. 144-Fed., dated the 4th March, 1937, Gazette of India, 1937, Pt. I, p. 436.

(3) It shall be lawful for His Majesty to appoint one person to fill both the said offices.

4. There shall be a Commander-in-Chief of His Majesty's Forces in India appointed by Warrant under the Royal Sign Manual.

The Commander-in-Chief in India.

## PART II.

### THE FEDERATION OF INDIA.

#### CHAPTER I.

##### ESTABLISHMENT OF FEDERATION AND ACCESSION OF INDIAN STATES.

5. (1) It shall be lawful for His Majesty, if an address in that behalf has been presented to him by each House of Parliament and if the condition hereinafter mentioned is satisfied, to declare by Proclamation that as from the day therein appointed there shall be united in a Federation under the Crown, by the name of the Federation of India,—

Proclamation of Federation of India.

- (a) the Provinces hereinafter called Governors' Provinces; and
- (b) the Indian States which have acceded or may thereafter accede to the Federation;

and in the Federation so established there shall be included the Provinces hereinafter called Chief Commissioners' Provinces.

(2) The condition referred to is that States—

- (a) the Rulers whereof will, in accordance with the provisions contained in Part II of the First Schedule to this Act, be entitled to choose not less than fifty-two members of the Council of State; and
- (b) the aggregate population whereof, as ascertained in accordance with the said provisions, amounts to at least one-half of the total population of the States as so ascertained,

have acceded to the Federation.

6. (1) A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instrument of Accession executed by the Ruler thereof, whereby the Ruler for himself, his heirs and successors—

Accession of Indian States.

- (a) declares that he accedes to the Federation as established under this Act, with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to his State such functions as may be vested in them by or under this Act; and



- (b) assumes the obligation of ensuring that due effect is given within his State to the provisions of this Act so far as they are applicable therein by virtue of his Instrument of Accession :

Provided that an Instrument of Accession may be executed conditionally on the establishment of the Federation on or before a specified date, and in that case the State shall not be deemed to have acceded to the Federation if the Federation is not established until after that date.

(2) An Instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Federal Legislature may make laws for his State, and the limitations, if any, to which the power of the Federal Legislature to make laws for his State, and the exercise of the executive authority of the Federation in his State, are respectively to be subject.

(3) A Ruler may, by a supplementary Instrument executed by him and accepted by His Majesty, vary the Instrument of Accession of his State by extending the functions which by virtue of that Instrument are exercisable by His Majesty or any Federal Authority in relation to his State.

(4) Nothing in this section shall be construed as requiring His Majesty to accept any Instrument of Accession or supplementary Instrument unless he considers it proper so to do, or as empowering His Majesty to accept any such Instrument if it appears to him that the terms thereof are inconsistent with the scheme of Federation embodied in this Act :

Provided that after the establishment of the Federation, if any Instrument has in fact been accepted by His Majesty, the validity of that Instrument or of any of its provisions shall not be called in question and the provisions of this Act shall, in relation to the State, have effect subject to the provisions of the Instrument.

(5) It shall be a term of every Instrument of Accession that the provisions of this Act mentioned in the Second Schedule thereto may, without affecting the accession of the State, be amended by or by authority of Parliament, but no such amendment shall, unless it is accepted by the Ruler in a supplementary Instrument, be construed as extending the functions which by virtue of the Instrument are exercisable by His Majesty or any Federal Authority in relation to the State.

(6) An Instrument of Accession or supplementary Instrument shall not be valid unless it is executed by the Ruler himself, but, subject as aforesaid, references in this Act to the Ruler of a State include references to any persons for the time being exercising the powers of the Ruler of the State, whether by reason of the Ruler's minority or for any other reason.

(7) After the establishment of the Federation the request of a Ruler that his State may be admitted to the Federation shall be transmitted to His Majesty through the Governor-General, and after the expiration of twenty years from the establishment of the Federation the Governor-General shall not transmit to His Majesty any such request until there has been presented to him by each Chamber of the Federal Legislature, for submission to His

Majesty, an address praying that His Majesty may be pleased to admit the State into the Federation.

(8) In this Act a State which has acceded to the Federation is referred to as a Federated State, and the Instrument by virtue of which a State has so acceded, construed together with any supplementary Instrument executed under this section, is referred to as the Instrument of Accession of that State.

(9) As soon as may be after any Instrument of Accession or supplementary Instrument has been accepted by His Majesty under this section, copies of the Instrument and of His Majesty's acceptance thereof shall be laid before Parliament, and all courts shall take judicial notice of every such Instrument and Acceptance.

## CHAPTER II.

### THE FEDERAL EXECUTIVE.

#### *The Governor-General.*

7. (1) Subject to the provisions of this Act, the executive authority of the Federation shall be exercised on behalf of His Majesty by the Governor-General, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor-General any functions conferred by any existing Indian law on any court, judge or officer, or on any local or other authority.

Functions  
of Governor  
General.

(2) References in this Act to the functions of the Governor-General shall be construed as references to his powers and duties in the exercise of the executive authority of the Federation and to any other powers and duties conferred or imposed on him as Governor-General by or under this Act, other than powers exercisable by him by reason that they have been assigned to him by His Majesty under Part I of this Act.

(3) The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor-General and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office.

8. (1) Subject to the provisions of this Act, the executive authority of the Federation extends—

Extent of  
executive  
authority of  
the Federa-  
tion.

- (a) to the matters with respect to which the Federal Legislature has power to make laws ;
- (b) to the raising in British India on behalf of His Majesty of naval, military and air forces and to the governance of His Majesty's forces borne on the Indian establishment ;
- (c) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance, or otherwise in and in relation to the tribal areas :

Provided that—

- (i) the said authority does not, save as expressly provided in this Act, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws ;
- (ii) the said authority does not, save as expressly provided in this Act, extend in any Federated State save to matters with respect to which the Federal Legislature has power to make laws for that State, and the exercise thereof in each State shall be subject to such limitations, if any, as may be specified in the Instrument of Accession of the State ;
- (iii) the said authority does not extend to the enlistment or enrolment in any forces raised in India of any person unless he is either a subject of His Majesty or a native of India or of territories adjacent to India ; and
- (iv) commissions in any such force shall be granted by His Majesty save in so far as he may be pleased to delegate that power by virtue of the provisions of Part I of this Act or otherwise.

(2) The executive authority of the Ruler of a Federated State shall, notwithstanding anything in this section, continue to be exercisable in that State with respect to matters with respect to which the Federal Legislature has power to make laws for that State except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal law.

#### *Administration of Federal Affairs.*

Council of  
ministers.

9. (1) There shall be a council of ministers, not exceeding ten in number, to aid and advise the Governor-General in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion :

Provided that nothing in this subsection shall be construed as preventing the Governor-General from exercising his individual judgment in any case where by or under this Act he is required so to do.

(2) The Governor-General in his discretion may preside at meetings of the council of ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor-General in his discretion shall be final, and the validity of anything done by the Governor-General shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment.

Other  
provisors  
as to  
ministers.

10. (1) The Governor-General's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold office during his pleasure.

(2) A minister who for any period of six consecutive months is not a member of either Chamber of the Federal Legislature shall at the expiration of that period cease to be a minister.

(3) The salaries of ministers shall be such as the Federal Legislature may from time to time by Act determine and, until the Federal Legislature so determine, shall be determined by the Governor-General :

Provided that the salary of a minister shall not be varied during his term of office.

(4) The question whether any and, if so, what advice was tendered by ministers to the Governor-General shall not be inquired into in any court.

(5) The functions of the Governor-General with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion.

**11.** (1) The functions of the Governor-General with respect to defence and ecclesiastical affairs and with respect to external affairs, except the relations between the Federation and any part of His Majesty's dominions, shall be exercised by him in his discretion, and his functions in or in relation to the tribal areas shall be similarly exercised. Provisions as to defence, ecclesiastical affairs, external affairs and the tribal areas.

(2) To assist him in the exercise of those functions the Governor-General may appoint counsellors, not exceeding three in number, whose salaries and conditions of service shall be such as may be prescribed by His Majesty in Council.

**12.** (1) In the exercise of his functions the Governor-General shall have the following special responsibilities, that is to say,— Special responsibilities of Governor-General.

- (a) the prevention of any grave menace to the peace or tranquillity of India or any part thereof ;
- (b) the safeguarding of the financial stability and credit of the Federal Government ;
- (c) the safeguarding of the legitimate interests of minorities ;
- (d) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests ;
- (e) the securing in the sphere of executive action of the purposes which the provisions of chapter III of Part V of this Act are designed to secure in relation to legislation ;
- (f) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment ;
- (g) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof ; and

- (h) the securing that the due discharge of his functions with respect to matters with respect to which he is by or under this Act required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.

(2) If and in so far as any special responsibility of the Governor-General is involved, he shall in the exercise of his functions exercise his individual judgment as to the action to be taken.

Provisions  
as to  
Instrument  
of Instruc-  
tions.

**13.** (1) The Secretary of State shall lay before Parliament the draft of any Instrument of Instructions (including any Instrument amending or revoking an Instrument previously issued) which it is proposed to recommend His Majesty to issue to the Governor-General, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instrument may be issued.

(2) The validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

Superin-  
tendence of  
Secretary  
of State.

**14.** (1) In so far as the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by the Secretary of State, but the validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

(2) Before giving any directions under this section the Secretary of State shall satisfy himself that nothing in the directions requires the Governor-General to act in any manner inconsistent with any Instrument of Instructions issued to him by His Majesty.

Financial  
adviser to  
Governor-  
General.

**15.** (1) The Governor-General may appoint a person to be his financial adviser.

(2) It shall be the duty of the Governor-General's financial adviser to assist by his advice the Governor-General in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federal Government, and also to give advice to the Federal Government upon any matter relating to finance with respect to which he may be consulted.

(3) The Governor-General's financial adviser shall hold office during the pleasure of the Governor-General, and the salary and allowances of the financial adviser and the numbers of his staff and their conditions of service shall be such as the Governor-General may determine.

(4) The powers of the Governor-General with respect to the appointment and dismissal of a financial adviser, and with respect to the determination of his salary and allowances and the numbers of his staff and their conditions of service, shall be exercised by him in his discretion :

Provided that, if the Governor-General has determined to appoint a financial adviser, he shall, before making any appointment other than the first appointment, consult his ministers as to the person to be selected.

**16.<sup>1</sup>** (1) The Governor-General shall appoint a person, being a person qualified to be appointed a judge of the Federal Court, to be Advocate-General for the Federation. Advocate-General for Federation.

(2) It shall be the duty of the Advocate-General to give advice to the Federal Government upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Governor-General, and in the performance of his duties he shall have right of audience in all courts in British India and, in a case in which federal interests are concerned, in all courts in any Federated State.

(3) The Advocate-General shall hold office during the pleasure of the Governor-General, and shall receive such remuneration as the Governor-General may determine.

(4) In exercising his powers with respect to the appointment and dismissal of the Advocate-General and with respect to the determination of his remuneration, the Governor-General shall exercise his individual judgment.

**17.** (1) All executive action of the Federal Government shall be expressed to be taken in the name of the Governor-General. Conduct of business of Federal Government.

(2) Orders and other instruments made and executed in the name of the Governor-General shall be authenticated in such manner as may be specified in rules to be made by the Governor-General, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor-General.

(3) The Governor-General shall make rules for the more convenient transaction of the business of the Federal Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor-General is by or under this Act required to act in his discretion.

(4) The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor-General all such information with respect to the business of the Federal Government as may be specified in the rules, or as the Governor-General may otherwise require to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor-General, and the appropriate secretary to bring to the notice of the minister concerned and of the Governor-General, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor-General.

(5) In the discharge of his functions under subsections (2), (3) and (4) of this section the Governor-General shall act in his discretion after consultation with his ministers.

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<sup>1</sup> This section came into force on the 1st April, 1937, *see* the Government of India (Commencement and Transitory Provisions) Order, 1936, paras. 3 and 11.

## CHAPTER III.

## THE FEDERAL LEGISLATURE

*General.*

Constitution  
of the  
Federal  
Legislature.

18. (1) There shall be a Federal Legislature which shall consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as the Council of State and the House of Assembly (in this Act referred to as "the Federal Assembly").

(2) The Council of State shall consist of one hundred and fifty-six representatives of British India and not more than one hundred and four representatives of the Indian States, and the Federal Assembly shall consist of two hundred and fifty representatives of British India and not more than one hundred and twenty-five representatives of the Indian States.

(3) The said representatives shall be chosen in accordance with the provisions in that behalf contained in the First Schedule to this Act.

(4) The Council of State shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in the said First Schedule.

(5) Every Federal Assembly, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

Sessions of  
the Legis-  
lature, pro-  
rogation and  
dissolution.

19. (1) The Chambers of the Federal Legislature shall be summoned to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of this section, the Governor-General may in his discretion from time to time—

(a) summon the Chambers or either Chamber to meet at such time and place as he thinks fit ;

(b) prorogue the Chambers ;

(c) dissolve the Federal Assembly.

(3) The Chambers shall be summoned to meet for their first session on a day not later than such day as may be specified in that behalf in His Majesty's Proclamation establishing the Federation.

Right of  
Governor-  
General to  
address, and  
send  
messages to,  
Chambers.

20. (1) The Governor-General may in his discretion address either Chamber of the Federal Legislature or both Chambers assembled together, and for that purpose require the attendance of members.

(2) The Governor-General may in his discretion send messages to either Chamber of the Federal Legislature, whether with respect to a Bill then pending in the Legislature or otherwise, and a Chamber to whom any message

is so sent shall with all convenient dispatch consider any matter which they are required by the message to take into consideration.

21. Every minister, every counsellor and the Advocate-General shall have the right to speak in, and otherwise to take part in the proceedings of, either Chamber, any joint sitting of the Chambers, and any committee of the Legislature of which he may be named a member, but shall not by virtue of this section be entitled to vote.

22. (1) The Council of State shall as soon as may be choose two members of the Council to be respectively President and Deputy President thereof and, so often as the office of President or Deputy President becomes vacant, the Council shall choose another member to be President or Deputy President, as the case may be.

(2) A member holding office as President or Deputy President of the Council of State shall vacate his office if he ceases to be a member of the Council, may at any time resign his office by writing under his hand addressed to the Governor-General, and may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council; but no resolution for the purpose of this subsection shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

(3) While the office of President is vacant, the duties of the office shall be performed by the Deputy President, or, if the office of Deputy President is also vacant, by such member of the Council as the Governor-General may in his discretion appoint for the purpose, and during any absence of the President from any sitting of the Council the Deputy President or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as President.

(4) There shall be paid to the President and the Deputy President of the Council of State such salaries as may be respectively fixed by Act of the Federal Legislature, and, until provision in that behalf is so made, such salaries as the Governor-General may determine.

(5) The foregoing provisions of this section shall apply in relation to the Federal Assembly as they apply in relation to the Council of State with the substitution of the titles "Speaker" and "Deputy Speaker" for the titles "President" and "Deputy President" respectively, and with the substitution of references to the Assembly for references to the Council:

Provided that, without prejudice to the provisions of subsection (2) of this section as applied by this subsection, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

23. (1) Save as provided in the last preceding section, all questions at any sitting or joint sitting of the Chambers shall be determined by a majority of votes of the members present and voting, other than the President or Speaker or person acting as such.

Rights of  
ministers,  
counsellors  
and  
Advocate-  
General  
as respects  
Chambers.  
Officers of  
Chambers.

Voting in  
Chambers.  
power of  
Chambers to  
act notwith-  
standing  
vacancies,  
and quorum.



The President or Speaker or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) A Chamber of the Federal Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of a Chamber less than one-sixth of the total number of members of the Chamber are present, it shall be the duty of the President or Speaker or person acting as such either to adjourn the Chamber, or to suspend the meeting until at least one-sixth of the members are present.

*Provisions as to Members of Legislature.*

Oath of  
members.

**24.** Every member of either Chamber shall, before taking his seat, make and subscribe before the Governor-General, or some person appointed by him, an oath according to that one of the forms set out in the Fourth Schedule to this Act which the member accepts as appropriate in his case.

Vacation  
of seats.

**25.** (1) No person shall be a member of both Chambers, and rules made by the Governor-General exercising his individual judgment shall provide for the vacation by a person who is chosen a member of both Chambers of his seat in one Chamber or the other.

(2) If a member of either Chamber—

(a) becomes, subject to any of the disqualifications mentioned in subsection (1) of the next succeeding section ; or

(b) by writing under his hand addressed to the Governor-General resigns his seat,

his seat shall thereupon become vacant.

(3) If for sixty days a member of either Chamber is without permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant :

Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued or is adjourned for more than four consecutive days.

Disqualifi-  
cations for  
member-  
ship.

**26.** (1) A person shall be disqualified for being chosen as, and for being, a member of either Chamber—

(a) if he holds any office of profit under the Crown in India, other than an office declared by Act of the Federal Legislature not to disqualify its holder ;

(b) if he is of unsound mind and stands so declared by a competent court ;

(c) if he is an undischarged insolvent ;

- (d) if, whether before or after the establishment of the Federation, he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council or by an Act of the Federal Legislature to be an offence or practice entailing disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf by the provisions of that Order or Act ;
- (e) if, whether before or after the establishment of the Federation, he has been convicted of any other offence by a court in British India or in a State which is a Federated State and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor-General, acting in his discretion, may allow in any particular case, has elapsed since his release ;
- (f) if, having been nominated as a candidate for the Federal or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under this Act or by any Act of the Federal or the Provincial Legislature, unless five years have elapsed from the date by which the return ought to have been lodged or the Governor-General, acting in his discretion, has removed the disqualification :

Provided that a disqualification under paragraph (f) of this subsection shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the Governor-General, acting in his discretion, may in any particular case allow.

(2) A person shall not be capable of being chosen a member of either Chamber while he is serving a sentence of transportation or of imprisonment for a criminal offence.

(3) Where a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of paragraph (d) or paragraph (e) of subsection (1) of this section is at the date of the disqualification a member of the Legislature, his seat shall, notwithstanding anything in this or the last preceding section, not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this subsection he shall not sit or vote.

(4) For the purposes of this section a person shall not be deemed to hold an office of profit under the Crown in India by reason only that—

- (a) he is a minister either for the Federation or for a Province ; or
- (b) while serving a State, he remains a member of one of the services of the Crown in India and retains all or any of his rights as such.

Penalty for sitting and voting when not qualified, or when disqualified.

27. If a person sits or votes as a member of either Chamber when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of subsection (3) of the last preceding section, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Federation.

Privileges &c. of members.

28. (1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Federal Legislature, there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either Chamber of the Legislature of any report, paper, votes or proceedings.

(2) In other respects, the privileges of members of the Chambers shall be such as may from time to time be defined by Act of the Federal Legislature and, until so defined, shall be such as were immediately before the establishment of the Federation enjoyed by members of the Indian Legislature.

(3) Nothing in any existing Indian Act, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering the Federal Legislature to confer, on either Chamber or on both Chambers sitting together, or on any committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

(4) Provision may be made by an Act of the Federal Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the Chairman of the Committee so to do :

Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India, and safeguarding confidential matter from disclosure, as may be made by the Governor-General exercising his individual judgment.

(5) The provisions of subsections (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise take part in the proceedings of a Chamber as they apply in relation to members of the Legislature.

Salaries and allowances of members.

29. Members of either Chamber shall be entitled to receive such salaries, and allowances as may from time to time be determined by Act of the Federal Legislature and, until provision in that respect is so made, allowances at

such rates and upon such conditions as were immediately before the date of the establishment of the Federation applicable in the case of members of the Legislative Assembly of the Indian Legislature.

*Legislative Procedure.*

**30.** (1) Subject to the special provisions of this Part of this Act with respect to financial Bills, a Bill may originate in either Chamber.

(2) Subject to the provisions of the next succeeding section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature unless it has been agreed to by both Chambers, either without amendment or with such amendments only as are agreed to by both Chambers.

(3) A Bill pending in the Legislature shall not lapse by reason of the prorogation of the Chambers.

(4) A Bill pending in the Council of State which has not been passed by the Federal Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Federal Assembly or which having been passed by the Federal Assembly is pending in the Council of State shall, subject to the provisions of the next succeeding section, lapse on a dissolution of the Assembly.

**31.** (1) If after a Bill has been passed by one Chamber and transmitted to the other Chamber—

- (a) the Bill is rejected by the other Chamber; or
- (b) the Chambers have finally disagreed as to the amendments to be made in the Bill; or
- (c) more than six months elapse from the date of the reception of the Bill by the other Chamber without the Bill being presented to the Governor-General for his assent,

the Governor-General may, unless the Bill has lapsed by reason of a dissolution of the Assembly, notify to the Chambers, by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that, if it appears to the Governor-General that the Bill relates to finance or to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment, he may so notify the Chambers notwithstanding that there has been no rejection of or final disagreement as to the Bill and notwithstanding that the said period of six months has not elapsed, if he is satisfied that there is no reasonable prospect of the Bill being presented to him for his assent without undue delay.

In reckoning any such period of six months as is referred to in this subsection, no account shall be taken of any time during which the Legislature is

Provisions  
as to  
introduction  
and passing  
of Bills.

Joint  
sittings of  
both Cham-  
bers in cer-  
tain cases.

prorogued or during which both Chambers are adjourned for more than four days.

(2) Where the Governor-General has notified his intention of summoning the Chambers to meet in a joint sitting, neither Chamber shall proceed further with the Bill, but the Governor-General may at any time in the next session after the expiration of six months from the date of his notification summon the Chambers to meet in a joint sitting for the purpose specified in his notification and, if he does so, the Chambers shall meet accordingly :

Provided that, if it appears to the Governor-General that the Bill is such a Bill as is mentioned in the proviso to subsection (1) of this section, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid at any date, whether in the same session or in the next session.

(3) The functions of the Governor-General under the provisos to the two last preceding subsections shall be exercised by him in his discretion.

(4) If at the joint sitting of the two Chambers the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers :

Provided that at a joint sitting—

(a) if the Bill, having been passed by one Chamber, has not been passed by the other Chamber with amendments and returned to the Chamber in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill ;

(b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed,

and the decision of the person presiding as to the amendments which are admissible under this subsection shall be final.

(5) A joint sitting may be held under this section and a Bill passed thereat notwithstanding that a dissolution of the Assembly has intervened since the Governor-General notified his intention to summon the Chambers to meet therein.

**32.** (1) When a Bill has been passed by the Chambers, it shall be presented to the Governor-General, and the Governor-General shall in his discretion declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the signification of His Majesty's pleasure :

Provided that the Governor-General may in his discretion return the Bill to the Chambers with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Chambers shall reconsider the Bill accordingly.

(2) A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Federal Legislature unless and until, within twelve months from the day on which it was presented to the Governor-General, the Governor-General makes known by public notification that His Majesty has assented thereto.

(3) Any Act assented to by the Governor-General may be disallowed by His Majesty within twelve months from the day of the Governor-General's assent, and where any Act is so disallowed the Governor-General shall forthwith make the disallowance known by public notification, and as from the date of the notification the Act shall become void.

*Procedure in Financial matters.*

**33.** (1) The Governor-General shall in respect of every financial year cause to be laid before both Chambers of the Federal Legislature a statement of the estimated receipts and expenditure of the Federation for that year, in this Part of this Act referred to as the "annual financial statement". Annual financial statement.

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

- (a) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Federation; and
- (b) the sums required to meet other expenditure proposed to be made from the revenues of the Federation,

and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor-General has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

(3) The following expenditure shall be expenditure charged on the revenues of the Federation :—

- (a) the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is required to be made by Order in Council;
- (b) debt charges for which the Federation is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;
- (c)<sup>1</sup> the salaries and allowances of ministers, of counsellors, of the financial adviser, of the advocate-general, of chief commissioners, and of the staff of the financial adviser;
- (d) the salaries, allowances, and pensions payable to or in respect of judges of the Federal Court, and the pensions payable to or in respect of judges of any High Court;

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<sup>1</sup> In so far as it relates to the Advocate-General, this clause came into force on the 1st April, 1937, see the Government of India (Commencement and Transitory Provisions) Order 1936, paras. 3 and 11.

- (e) expenditure for the purpose of the discharge by the Governor-General of his functions with respect to defence and ecclesiastical affairs, his functions with respect to external affairs in so far as he is by or under this Act required in the exercise thereof to act in his discretion, his functions in or in relation to tribal areas, and his functions in relation to the administration of any territory in the direction and control of which he is under this Act required to act in his discretion : provided that the sum so charged in any year in respect of expenditure on ecclesiastical affairs shall not exceed forty-two lakhs of rupees, exclusive of pension charges ;
- (f) the sums payable to His Majesty under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States ;
- (g) any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas ;
- (h) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal ;
- (i) any other expenditure declared by this Act or any Act of the Federal Legislature to be so charged.

(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Federation shall be decided by the Governor-General in his discretion.

Procedure  
in Legisla-  
ture with  
respect to  
estimates.

**34.** (1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of the Federation shall not be submitted to the vote of the Legislature, but nothing in this subsection shall be construed as preventing the discussion in either Chamber of the Legislature of any of those estimates other than estimates relating to expenditure referred to in paragraph (a) or paragraph (f) of subsection (3) of the last preceding section.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Federal Assembly and thereafter to the Council of State, and either Chamber shall have power to assent or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein :

Provided that, where the Assembly have refused to assent to any demand, that demand shall not be submitted to the Council of State, unless the Governor-General so directs and, where the Assembly have assented to a demand subject to a reduction of the amount specified therein, a demand for the reduced amount only shall be submitted to the Council of State, unless the Governor-General otherwise directs ; and where, in either of the said cases, such a direction is given, the demand submitted to the Council of State shall be for such amount, not being a greater amount than that originally demanded, as may be specified in the direction.

(3) If the Chambers differ with respect to any demand the Governor-General shall summon the two Chambers to meet in a joint sitting for the purpose of deliberating and voting on the demand as to which they disagree, and the decision of the majority of the members of both Chambers present and voting shall be deemed to be the decision of the two Chambers.

(4) No demand for a grant shall be made except on the recommendation of the Governor-General.

**35.** (1) The Governor-General shall authenticate by his signature a schedule specifying—

Authentica-  
tion of  
schedule of  
authorised  
expendi-  
ture.

- (a) the grants made by the Chambers under the last preceding section ;
- (b) the several sums required to meet the expenditure charged on the revenues of the Federation but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Legislature :

Provided that, if the Chambers have not assented to any demand for a grant or have assented subject to a reduction of the amount specified therein, the Governor-General may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be as appears to him necessary in order to enable him to discharge that responsibility.

(2) The schedule so authenticated shall be laid before both Chambers but shall not be open to discussion or vote therein.

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Federation shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

**36.** If in respect of any financial year further expenditure from the revenues of the Federation becomes necessary over and above the expenditure theretofore authorised for that year, the Governor-General shall cause to be laid before both Chambers of the Federal Legislature a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

Supplemen-  
tary state-  
ments of  
expendi-  
ture.

**37.** (1) A Bill or amendment making provision—

- (a) for imposing or increasing any tax ; or
- (b) for regulating the borrowing of money or the giving of any guarantee by the Federal Government, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Federal Government ; or
- (c) for declaring any expenditure to be expenditure charged on the revenues of the Federation, or for increasing the amount of any such expenditure,

Special  
provisions  
as to  
financial  
Bills.



shall not be introduced or moved except on the recommendation of the Governor-General, and a Bill making such provision shall not be introduced in the Council of State.

(2) A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of the Federation shall not be passed by either Chamber unless the Governor-General has recommended to that Chamber the consideration of the Bill.

*Procedure generally.*

**Rules of  
procedure.**

**38.** (1) Each Chamber of the Federal Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business ;

Provided that as regards each Chamber the Governor-General shall in his discretion, after consultation with the President or the Speaker, as the case may be, make rules—

- (a) for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment ;
- (b) for securing the timely completion of financial business ;
- (c) for prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State, other than a matter with respect to which the Federal Legislature has power to make laws for that State, unless the Governor-General in his discretion is satisfied that the matter affects Federal interests or affects a British subject, and has given his consent to the matter being discussed or the question being asked ;
- (d) for prohibiting, save with the consent of the Governor-General in his discretion,—
  - (i) the discussion of, or the asking of questions on, any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince ; or
  - (ii) the discussion, except in relation to estimates of expenditure, of, or the asking of questions on, any matter connected with the tribal areas or the administration of any excluded area ; or
  - (iii) the discussion of, or the asking of questions on, any action taken in his discretion by the Governor-General in relation to the affairs of a Province ; or

(iv) the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State, or of a member of the ruling family thereof ;

and, if and in so far as any rule so made by the Governor-General is inconsistent with any rule made by a Chamber, the rule made by the Governor-General shall prevail.

(2) The Governor-General, after consultation with the President of the Council of State and the Speaker of the Legislative Assembly, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers.

The said rules shall make such provision for the purposes specified in the proviso to the preceding subsection as the Governor-General in his discretion may think fit.

(3) Until rules are made under this section, the rules of procedure and standing orders in force immediately before the establishment of the Federation with respect to the Indian Legislature shall have effect in relation to the Federal Legislature subject to such modifications and adaptations as may be made therein by the Governor-General in his discretion.

(4) At a joint sitting of the two Chambers the President of the Council of State, or in his absence such person as may be determined by rules of procedure made under this section, shall preside.

**39.** All proceedings in the Federal Legislature shall be conducted in the English language :

English to be used in the Federal Legislature.

Provided that the rules of procedure of each Chamber and the rules with respect to joint sittings shall provide for enabling persons unacquainted, or not sufficiently acquainted, with the English language to use another language.

**40.** (1) No discussion shall take place in the Federal Legislature with respect to the conduct of any judge of the Federal Court or a High Court in the discharge of his duties.

Restrictions on discussion in the Legislature.

In this subsection the reference to a High Court shall be construed as including a reference to any court in a Federated State which is a High Court for any of the purposes of Part IX of this Act.

(2) If the Governor-General in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Federal Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of India or any part thereof, he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill, clause or amendment, and effect shall be given to the direction.

**41.** (1) The validity of any proceedings in the Federal Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

Courts not to inquire into proceedings of the Legislature.

(2) No officer or other member of the Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

#### CHAPTER IV.

#### LEGISLATIVE POWERS OF GOVERNOR-GENERAL.

Power of Governor-General to promulgate ordinances during recess of Legislature.

**42.** (1) If at any time when the Federal Legislature is not in session the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require :

Provided that the Governor-General—

- (a) shall exercise his individual judgment as respects the promulgation of any ordinance under this section if a Bill containing the same provisions would under this Act have required his previous sanction to the introduction thereof into the Legislature ; and
- (b) shall not, without instructions from His Majesty, promulgate any such ordinance if he would have deemed it necessary to reserve a Bill containing the same provisions for the signification of His Majesty's pleasure thereon.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

- (a) shall be laid before the Federal Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or, if before the expiration of that period resolutions disapproving it are passed by both Chambers, upon the passing of the second of those resolutions ;
- (b) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General ; and
- (c) may be withdrawn at any time by the Governor-General.

(3) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

Power of Governor-General to promulgate ordinances at any time with respect to certain subjects.

**43.** (1) If at any time the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require.

(2) An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

- (a) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General;
- (b) may be withdrawn at any time by the Governor-General; and
- (c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(4) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

44. (1) If at any time it appears to the Governor-General that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to both Chambers of the Legislature explain the circumstances which in his opinion render legislation essential, and either—

Power of Governor-General in certain circumstances to enact Acts.

- (a) enact forthwith, as a Governor-General's Act, a Bill containing such provisions as he considers necessary; or
- (b) attach to his message a draft of the Bill which he considers necessary.

(2) Where the Governor-General takes such action as is mentioned in paragraph (b) of the preceding subsection, he may at any time after the expiration of one month enact, as a Governor-General's Act, the Bill proposed by him to the Chambers either in the form of the draft communicated to them or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by either Chamber with reference to the Bill or to amendments suggested to be made therein.

(3) A Governor-General's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Federal Legislature assented to by the Governor-General and, if and in so far as a Governor-General's Act makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(4) Every Governor-General's Act shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

#### CHAPTER V.

##### PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY.

Power of  
Governor-  
General to  
issue Pro-  
clamations.

45. (1) If at any time the Governor-General is satisfied that a situation has arisen in which the government of the Federation cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—

(a) declare that his functions shall to such extent as may be specified in the Proclamation be exercised by him in his discretion ;

(b) assume to himself all or any of the powers vested in or exercisable by any Federal body or authority ;

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Federal body or authority :

Provided that nothing in this subsection shall authorise the Governor-General to assume to himself any of the powers vested in or exercisable by the Federal Court or to suspend, either in whole or in part, the operation of any provision of this Act relating to the Federal Court.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation issued under this section—

(a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament ;

(b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months :

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this subsection it would otherwise have ceased to operate.

(4) If at any time the Government of the Federation has for a continuous period of three years been carried on under and by virtue of a Proclamation issued under this section, then, at the expiration of that period, the Proclamation shall cease to have effect and the Government of the Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment thereof which Parliament may deem it necessary to make,

but nothing in this subsection shall be construed as extending the power of Parliament to make amendments in this Act without affecting the accession of a State.

(5) If the Governor-General, by a Proclamation under this section, assumes to himself any power of the Federal Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Federal Acts, Federal laws, or Acts or laws of the Federal Legislature shall be construed as including a reference to such a law.

(6) The functions of the Governor-General under this section shall be exercised by him in his discretion.

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### PART III.<sup>1</sup>

#### THE GOVERNORS' PROVINCES.

##### CHAPTER I.

##### THE PROVINCES.

**46.** (1) Subject to the provisions of the next succeeding section with <sup>Governors'</sup> ~~Provinces.~~ respect to Berar, the following shall be Governors' Provinces, that is to say, Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa, Sind, and such other Governors' Provinces as may be created under this Act.

(2) Burma shall cease to be part of India.

(3) In this Act the expression "Province" means, unless the context otherwise requires, a Governor's Province, and "Provincial" shall be construed accordingly.

**47.** Whereas certain territory (in this Act referred to as "Berar") is <sup>Provisions</sup> ~~as to Berar.~~ under the sovereignty of His Exalted Highness the Nizam of Hyderabad, but is at the date of the passing of this Act, by virtue of certain agreements subsisting between His Majesty and His Exalted Highness, administered together with the Central Provinces :

And whereas it is in contemplation that an agreement shall be concluded between His Majesty and His Exalted Highness whereby, notwithstanding the continuance of the sovereignty of His Exalted Highness over Berar, the

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<sup>1</sup> Part III came into force on the 1st April, 1937, see the Government of India (Commencement and Transitory Provisions) Order, 1936, para. 3.

Central Provinces and Berar may be governed together as one Governor's Province under this Act by the name of the Central Provinces and Berar :

Now, therefore,—

(1) While any such agreement is in force—

(a) Berar and the Central Provinces shall, notwithstanding the continuance of the sovereignty of His Exalted Highness, be deemed to be one Governor's Province by the name of the Central Provinces and Berar ;

(b) any reference in this Act or in any other Act to British India shall be construed as a reference to British India and Berar, and any reference in this Act to subjects of His Majesty shall, except for the purposes of any oath of allegiance, be deemed to include a reference to Berari subjects of His Exalted Highness ;

(c) any provision made under this Act with respect to the qualifications of the voters for the Provincial Legislature of the Central Provinces and Berar, or the voters for the Council of State, shall be such as to give effect to any provisions with respect to those matters contained in the agreement :

(2) If no such agreement is concluded, or if such an agreement is concluded but subsequently ceases to have effect, references in this Act to the Central Provinces and Berar shall be construed as references to the Central Provinces, and His Majesty in Council may make such consequential modifications in the provisions of this Act relating to the Central Provinces as he thinks proper.

## CHAPTER II.

### THE PROVINCIAL EXECUTIVE.

#### *The Governor.*

**Appoint-  
ment of  
Governor.**

**48.** (1) The Governor of a Province is appointed by His Majesty by a Commission under the Royal Sign Manual.

(2) The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office.

**Executive  
authority  
of Province.**

**49.** (1) The executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal or the Provincial Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge, or officer or any local or other authority.

(2) Subject to the provisions of this Act, the executive authority of each Province extends to the matters with respect to which the Legislature of the Province has power to make laws.

*Administration of Provincial Affairs.*

**50.** (1) There shall be a council of ministers to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion : Council of ministers.

Provided that nothing in this subsection shall be construed as preventing the Governor from exercising his individual judgment in any case where by or under this Act he is required so to do.

(2) The Governor in his discretion may preside at meetings of the council of ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment.

**51.** (1) The Governor's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold office during his pleasure. Other provisions as to ministers.

(2) A minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that period cease to be a minister.

(3) The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the Provincial Legislature so determine, shall be determined by the Governor :

Provided that the salary of a minister shall not be varied during his term of office.

(4) The question whether any, and if so what, advice was tendered by ministers to the Governor shall not be inquired into in any court.

(5) The functions of the Governor under this section with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion.

**52.** (1) In the exercise of his functions the Governor shall have the following special responsibilities, that is to say :— Special responsibilities of Governor.

(a) the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof ;

(b) the safeguarding of the legitimate interests of minorities ;



- (c) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act, and the safeguarding of their legitimate interests ;
- (d) the securing in the sphere of executive action of the purposes which the provisions of chapter III of Part V of this Act are designed to secure in relation to legislation ;
- (e) the securing of the peace and good Government of areas which by or under the provisions of this Part of this Act are declared to be partially excluded areas ;
- (f) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof ; and
- (g) the securing of the execution of orders or directions lawfully issued to him under Part VI of this Act by the Governor-General in his discretion.

(2) The Governor of the Central Provinces and Berar shall also have the special responsibility of securing that a reasonable share of the revenues of the Province is expended in or for the benefit of Berar, the Governor of any Province which includes an excluded area shall also have the special responsibility of securing that the due discharge of his functions in respect of excluded areas is not prejudiced or impeded by any course of action taken with respect to any other matter, any Governor who is discharging any functions as agent for the Governor-General shall also have the special responsibility of securing that the due discharge of those functions is not prejudiced or impeded by any course of action taken with respect to any other matter, and the Governor of Sind shall also have the special responsibility of securing the proper administration of the Lloyd Barrage and Canals Scheme.

(3) If and in so far as any special responsibility of the Governor is involved, he shall, in the exercise of his functions, exercise his individual judgment as to the action to be taken.

Provisions  
as to In-  
strument of  
Instructions.

**53.** (1) The Secretary of State shall lay before Parliament the draft of any Instructions (including any Instructions amending or revoking Instructions previously issued) which it is proposed to recommend His Majesty to issue to the Governor of a Province, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instructions may be issued.

(2) The validity of anything done by the Governor of a Province shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

Superin-  
tendence of  
Governor-  
General.

**54.** (1) In so far as the Governor of a Province is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by, the Governor General in his discretion, but the validity of anything done by a Governor

shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

(2) Before giving any directions under this section, the Governor-General shall satisfy himself that nothing in the directions requires the Governor to act in any manner inconsistent with any Instrument of Instructions issued to the Governor by His Majesty.

**55.** (1) The Governor of each Province shall appoint a person, being a person qualified to be appointed a judge of a High Court, to be Advocate-General for the Province.

(2) It shall be the duty of the Advocate-General to give advice to the Provincial Government upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor.

(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

(4) In exercising his powers with respect to the appointment and dismissal of the Advocate-General and with respect to the determination of his remuneration, the Governor shall exercise his individual judgment.

**56.** Where it is proposed that the Governor of a Province should by virtue of any powers vested in him make or amend, or approve the making or amendment of, any rules, regulations or orders relating to any police force, whether civil or military, he shall exercise his individual judgment with respect to the proposal, unless it appears to him that the proposal does not relate to or affect the organisation or discipline of that force.

Provisions  
as to police  
rules.

**57.** (1) If it appears to the Governor of a Province that the peace or tranquillity of the Province is endangered by the operations of any persons committing, or conspiring, preparing or attempting to commit, crimes of violence which, in the opinion of the Governor, are intended to overthrow the government as by law established, the Governor may, if he thinks that the circumstances of the case require him so to do for the purpose of combating those operations, direct that his functions shall, to such extent as may be specified in the direction, be exercised by him in his discretion and, until otherwise provided by a subsequent direction of the Governor, those functions shall to that extent be exercised by him accordingly.

Provisions  
as to  
crimes of  
violence  
intended to  
overthrow  
Govern-  
ment.

(2) While any such direction is in force, the Governor may authorise an official to speak in and otherwise take part in the proceedings of the Legislature, and any official so authorised may speak and take part accordingly in the proceedings of the Chamber or Chambers of the Legislature, any joint sitting of the Chambers, and any committee of the Legislature of which he may be named a member by the Governor, but shall not be entitled to vote.

(3) The functions of the Governor under this section shall be exercised by him in his discretion.

(4) Nothing in this section affects the special responsibility of the Governor for the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof.

Sources of certain information not to be disclosed.

58. The Governor in his discretion shall make rules for securing that no records of information relating to the sources from which information has been or may be obtained with respect to the operations of persons committing, or conspiring, preparing, or attempting to commit, such crimes as are mentioned in the last preceding section, shall be disclosed or given—

(a) by any member of any police force in the Province to another member of that force except in accordance with directions of the Inspector-General of Police or Commissioner of Police, as the case may be, or to any other person except in accordance with directions of the Governor in his discretion; or

(b) by any other person in the service of the Crown in the Province to any person except in accordance with directions of the Governor in his discretion.

Conduct of business of Provincial Government.

59. (1) All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Provincial Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Act required to act in his discretion.

(4) The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor all such information with respect to the business of the Provincial Government as may be specified in the rules, or as the Governor may otherwise require to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor, and the appropriate secretary to bring to the notice of the minister concerned and of the Governor, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor.

(5) In the discharge of his functions under subsections (2), (3) and (4) of this section the Governor shall act in his discretion after consultation with his ministers.

### CHAPTER III.

#### THE PROVINCIAL LEGISLATURE.

##### *General.*

Constitution of Provincial Legislatures.

60. (1) There shall for every Province be a Provincial Legislature which shall consist of His Majesty, represented by the Governor, and

(a) in the Provinces of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam, two Chambers;

(b) in other Provinces, one Chamber.

(2) Where there are two Chambers of a Provincial Legislature, they shall be known respectively as the Legislative Council and the Legislative Assembly, and where there is only one Chamber, the Chamber shall be known as the Legislative Assembly.

**61.** (1) The composition of the Chamber or Chambers of the Legislature of a Province shall be such as is specified in relation to that Province in the Fifth Schedule to this Act. Composition of Chambers of Provincial Legislatures.

(2) Every Legislative Assembly of every Province, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

(3) Every Legislative Council shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provision in that behalf made in relation to the Province under the said Fifth Schedule.

**62.** (1) The Chamber or Chambers of each Provincial Legislature shall be summoned to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session. Sessions of the Legislature, prorogation and dissolution.

(2) Subject to the provisions of this section, the Governor may in his discretion from time to time—

(a) summon the Chambers or either Chamber to meet at such time and place as he thinks fit ;

(b) prorogue the Chamber or Chambers ;

(c) dissolve the Legislative Assembly.

(3) The Chamber or Chambers shall be summoned to meet for the first session of the Legislature on a day not later than six months after the commencement of this Part of this Act.

**63.** (1) The Governor may in his discretion address the Legislative Assembly or, in the case of a Province having a Legislative Council, either Chamber of the Provincial Legislature or both Chambers assembled together, and may for that purpose require the attendance of members. Right of Governor to address, and send messages to Chambers.

(2) The Governor may in his discretion send messages to the Chamber or Chambers of the Provincial Legislature, whether with respect to a Bill then pending in the Legislature or otherwise, and a Chamber to whom any message is so sent shall with all convenient dispatch consider any matter which they are required by the message to take into consideration.

**64.** Every minister and the Advocate-General shall have the right to speak in, and otherwise take part in the proceedings of, the Legislative Assembly of the Province or, in the case of a Province having a Legislative Council, both Chambers and any joint sitting of the Chambers, and to speak in, and otherwise take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this section, be entitled to vote. Rights of ministers and Advocate-General as respects Chambers.

Officers of  
Chambers.

**65.** (1) Every Provincial Legislative Assembly shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

(2) A member holding office as Speaker or Deputy Speaker of an Assembly shall vacate his office if he ceases to be a member of the Assembly, may at any time resign his office by writing under his hand addressed to the Governor, and may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly; but no resolution for the purpose of this subsection shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

(3) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may in his discretion appoint for the purpose, and during any absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

(4) There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly such salaries as may be respectively fixed by Act of the Provincial Legislature, and, until provision in that behalf is so made, such salaries as the Governor may determine.

(5) In the case of a Province having a Legislative Council, the foregoing provisions of this section (other than the proviso to subsection (2) thereof) shall apply in relation to the Legislative Council as they apply in relation to the Legislative Assembly, with the substitution of the titles "President" and "Deputy President" for the titles "Speaker" and "Deputy Speaker" respectively, and with the substitution of references to the Council for references to the Assembly.

Voting  
in Cham-  
bers,  
power of  
Chambers  
to act  
notwith-  
standing  
vacancies,  
and quorum.

**66.** (1) Save as in this Act otherwise expressly provided, all questions in a Chamber, or a joint sitting of two Chambers, of a Provincial Legislature shall be determined by a majority of votes of the members present and voting other than the Speaker or President, or person acting as such.

The Speaker or President, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) A Chamber of a Provincial Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in a Provincial Legislature shall be valid notwithstanding that it is discovered

subsequently that some person who was not entitled so to do, sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of a Provincial Legislative Assembly less than one-sixth of the total number of members of the Chamber are present, or if at any time during a meeting of a Provincial Legislative Council less than ten members are present, it shall be the duty of the Speaker or President or person acting as such either to adjourn the Chamber, or to suspend the meeting until at least one-sixth of the members, or, as the case may be, at least ten members, are present.

*Provisions as to Members of Legislatures.*

**67.** Every member of a Provincial Legislative Assembly or Legislative Council shall, before taking his seat, make and subscribe before the Governor, <sup>Oath of members.</sup> or some person appointed by him, an oath according to that one of the forms set out in the Fourth Schedule to this Act which the member accepts as appropriate in his case.

**68.** (1) No person shall be a member of both Chambers of a Provincial Legislature, and rules made by the Governor exercising his individual judgment shall provide for the vacation by a person who is chosen a member of both Chambers of his seat in one Chamber or the other. <sup>Vacation of seats.</sup>

(2) No person shall be a member both of the Federal Legislature and of a Provincial Legislature and if a person is chosen a member both of the Federal Legislature and of a Provincial Legislature, then, at the expiration of such period as may be specified in rules made by the Governor of the Province exercising his individual judgment, that person's seat in the Provincial Legislature shall become vacant, unless he has previously resigned his seat in the Federal Legislature.

(3) If a member of a Chamber—

(a) becomes subject to any of the disqualifications mentioned in subsection (1) of the next succeeding section; or

(b) by writing under his hand addressed to the Governor resigns his seat,

his seat shall thereupon become vacant.

(4) If for sixty days a member of a Chamber is without permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant :

Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.

**69.** (1) A person shall be disqualified for being chosen as, and for being, a member of a Provincial Legislative Assembly or Legislative Council— <sup>Disqualifications for membership.</sup>

(a) if he holds any office of profit under the Crown in India, other than an office declared by Act of the Provincial Legislature not to disqualify its holder ;

- (b) if he is of unsound mind and stands so declared by a competent court ;
- (c) if he is an undischarged insolvent ;
- (d) if, whether before or after the commencement of this Part of this Act, he has been convicted or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council, or by an Act of the Provincial Legislature, to be an offence or practice entailing disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf in the provisions of that Order or Act ;
- (e) if, whether before or after the commencement of this Part of this Act, he has been convicted of any other offence by a court in British India or in a State which is a Federated State and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor, acting in his discretion, may allow in any particular case, has elapsed since his release ;
- (f) if, having been nominated as a candidate for the Federal or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under this Act or by any Act of the Federal or the Provincial Legislature, unless five years have elapsed from the date by which the return ought to have been lodged or the Governor, acting in his discretion, has removed the disqualification :

Provided that a disqualification under paragraph (f) of this subsection, shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the Governor, acting in his discretion, may in any particular case allow.

(2) A person shall not be capable of being chosen a member of a Chamber of a Provincial Legislature while he is serving a sentence of transportation or of imprisonment for a criminal offence.

(3) Where a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of paragraph (d) or paragraph (e), of subsection (1) of this section is at the date of the disqualification a member of a Chamber, his seat shall, notwithstanding anything in this or the last preceding section, not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this subsection, he shall not sit or vote.

(4) For the purposes of this section a person shall not be deemed to hold an office of profit under the Crown in India by reason only that he is a minister either for the Federation or for a Province.

**70.** If a person sits or votes as a member of a Provincial Legislative Assembly or Legislative Council when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of subsection (3) of the last preceding section, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Province. Penalty for sitting and voting when not qualified, or when disqualified.

**71.** (1) Subject to the provisions of this Act and to rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in every Provincial Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a Chamber of such a Legislature of any report, paper, votes or proceedings. Privileges, &c. of members.

(2) In other respects the privileges of members of a Chamber of a Provincial Legislature shall be such as may from time to time be defined by Act of the Provincial Legislature, and, until so defined, shall be such as were immediately before the commencement of this Part of this Act enjoyed by members of the Legislative Council of the Province.

(3) Nothing in any existing Indian law, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act shall be construed as conferring, or empowering any Legislature to confer, on a Chamber thereof or on both Chambers sitting together or any committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than the power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

(4) Provision may be made by an Act of the Provincial Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the chairman of a committee so to do :

Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India, and safeguarding confidential matter from disclosure, as may be made by the Governor exercising his individual judgment.

(5) The provisions of subsections (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in and otherwise take part in the proceedings of a Chamber as they apply in relation to members of the Legislature.

**72.** Members of Provincial Legislative Assemblies and Legislative Councils shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Provincial Legislature, and until provision Salaries and allowances of members.



in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Part of this Act applicable in the case of members of the Legislative Council of the Province.

*Legislative Procedure.*

Intro-  
duction of  
Bills, &c.

**73.** (1) Subject to the special provisions of this Part of this Act with respect to financial Bills, a Bill may originate in either Chamber of the Legislature of a Province which has a Legislative Council.

(2) A Bill pending in the Legislature of a Province shall not lapse by reason of the prorogation of the Chamber or Chambers thereof.

(3) A Bill pending in the Legislative Council of a Province which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(4) A Bill which is pending in the Legislative Assembly of a Province, or which having been passed by the Legislative Assembly is pending in the Legislative Council shall lapse on a dissolution of the Assembly.

Passing of  
Bills in  
Provinces  
having  
Legislative  
Councils.

**74.** (1) Subject to the provisions of this section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature of a Province having a Legislative Council, unless it has been agreed to by both Chambers, either without amendments or with such amendments only as are agreed to by both Chambers.

(2) If a Bill which has been passed by the Legislative Assembly and transmitted to the Legislative Council is not, before the expiration of twelve months from its reception by the Council, presented to the Governor for his assent, the Governor may summon the Chambers to meet in a joint sitting for the purpose of deliberating and voting on the Bill :

Provided that, if it appears to the Governor that the Bill relates to finance or affects the discharge of any of his special responsibilities, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid notwithstanding that the said period of twelve months has not elapsed.

The functions of the Governor under the proviso to this subsection shall be exercised by him in his discretion.

(3) If at a joint sitting of the two Chambers summoned in accordance with the provisions of this section the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers :

Provided that at a joint sitting—

(a) unless the Bill has been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no amendment shall be proposed to the Bill other than such amendments, if any, as are made necessary by the delay in the passage of the Bill ;

- (b) if the Bill has been so passed and returned by the Legislative Council, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed,

and the decision of the person presiding as to the amendments which are admissible under this subsection shall be final.

**75.** A Bill which has been passed by the Provincial Legislative Assembly or, in the case of a Province having a Legislative Council, has been passed by both Chambers of the Provincial Legislature, shall be presented to the Governor, and the Governor in his discretion shall declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the consideration of the Governor-General : Assent to Bills.

Provided that the Governor may in his discretion return the Bill together with a message requesting that the Chamber or Chambers will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the Chamber or Chambers shall reconsider it accordingly.

**76.** (1) When a Bill is reserved by a Governor for the consideration of the Governor-General, the Governor-General shall in his discretion declare, either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the signification of His Majesty's pleasure thereon : Bills reserved for consideration.

Provided that the Governor-General may, if he in his discretion thinks fit, direct the Governor to return the Bill to the Chamber, or as the case may be, the Chambers, of the Provincial Legislature together with such a message as is mentioned in the proviso to the last preceding section and, when a Bill is so returned, the Chamber or Chambers shall reconsider it accordingly and, if it is again passed by them with or without amendment, it shall be presented again to the Governor-General for his consideration.

(2) A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Provincial Legislature unless and until, within twelve months from the day on which it was presented to the Governor, the Governor makes known by public notification that His Majesty has assented thereto.

**77.** Any act assented to by the Governor or the Governor-General may be disallowed by His Majesty within twelve months from the date of the assent, and where any Act is so disallowed the Governor shall forthwith make the disallowance known by public notification and as from the date of the notification the Act shall become void. Power of Crown to disallow Acts.

#### *Procedure in Financial matters.*

**78.** (1) The Governor shall in respect of every financial year cause to be laid before the Chamber or Chambers of the Legislature a statement of the Annual financial statement.

estimated receipts and expenditure of the Province for that year, in this Part of this Act referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

- (a) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Province ; and
- (b) the sums required to meet other expenditure proposed to be made from the revenues of the Province,

and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

(3) The following expenditure shall be expenditure charged on the revenues of each Province—

- (a) the salary and allowances of the Governor and other expenditure relating to his office for which provision is required to be made by Order in Council ;
- (b) debt charges for which the Province is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt ;
- (c) the salaries and allowances of ministers, and of the Advocate-General ;
- (d) expenditure in respect of the salaries and allowances of judges of any High Court ;
- (e) expenditure connected with the administration of any areas which are for the time being excluded areas ;
- (f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal ;
- (g) any other expenditure declared by this Act or any Act of the Provincial Legislature to be so charged.

(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Province shall be decided by the Governor in his discretion.

Procedure  
in Legis-  
lature with  
respect to  
estimates.

**79.** (1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of a Province shall not be submitted to the vote of the Legislative Assembly, but nothing in this subsection shall be construed as preventing the discussion in the Legislature of those estimates, other than estimates relating to expenditure referred to in paragraph (a) of subsection (3) of the last preceding section.

(2) So much of the said estimates as relates to other expenditure shall be submitted, in the form of demands for grants, to the Legislative Assembly, and

the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to a demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

**80.** (1) The Governor shall authenticate by his signature a schedule specifying—

- (a) the grants made by the Assembly under the last preceding section ;
- (b) the several sums required to meet the expenditure charged on the revenues of the Province but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Chamber or Chambers :

Authenti-  
cation of  
schedule of  
authorised  
expendi-  
ture.

Provided that, if the Assembly have refused to assent to any demand for a grant or have assented to such a demand subject to a reduction of the amount specified therein, the Governor may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge that responsibility.

(2) The schedule so authenticated shall be laid before the Assembly but shall not be open to discussion or vote in the Legislature.

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Province shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

**81.** If in respect of any financial year further expenditure from the revenues of the Province becomes necessary over and above the expenditure theretofore authorised for that year, the Governor shall cause to be laid before the Chamber or Chambers a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

Supple-  
mentary  
statements  
of expendi-  
ture.

**82.** (1) A Bill or amendment making provision—

- (a) for imposing or increasing any tax ; or
- (b) for regulating the borrowing of money or the giving of any guarantee by the Province, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Province ; or
- (c) for declaring any expenditure to be expenditure charged on the revenues of the Province, or for increasing the amount of any such expenditure ;

Special pro-  
visions as to  
financial  
Bills.

shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council.

(2) A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand and payment of fees for licences or fees for services rendered.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of a Province shall not be passed by a Chamber of the Legislature unless the Governor has recommended to that Chamber the consideration of the Bill.

Provisions  
with respect  
to certain  
educational  
grants.

**83.** (1) If in the last complete financial year before the commencement of this Part of this Act a grant for the benefit of the Anglo-Indian and European communities or either of them was included in the grants made in any Province for education, then in each subsequent financial year, not being a year in which the Provincial Legislative Assembly otherwise resolve by a majority which includes at least three-fourths of the members of the Assembly, a grant shall be made for the benefit of the said community or communities not less in amount than the average of the grants made for its or their benefit in the ten financial years ending on the thirty-first day of March, nineteen hundred and thirty-three ;

Provided that, if in any financial year the total grant for education in the Province is less than the average of the total grants for education in the Province in the said ten financial years, then, whatever fraction the former may be of the latter, any grant made under this subsection in that financial year for the benefit of the said community or communities need not exceed that fraction of the average of the grants made for its or their benefit in the said ten financial years.

In computing for the purposes of this subsection the amount of any grants, grants for capital purposes shall be included.

(2) The provisions of this section shall cease to have effect in a Province if at any time the Provincial Legislative Assembly resolve by a majority which includes at least three fourths of the members of the Assembly that those provisions shall cease to have effect.

(3) Nothing in this section affects the special responsibility of the Governor of a Province for the safeguarding of the legitimate interests of minorities.

#### *Procedure generally.*

Rules of  
procedure.

**84.** (1) A Chamber of a Provincial Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business :

Provided that, as regards either a Legislative Assembly or a Legislative Council, the Governor shall in his discretion, after consultation with the Speaker or the President, as the case may be make rules—

(a) for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment ;

- (b) for securing the timely completion of financial business ;
- (c) for prohibiting the discussion of, or the asking of questions on any matter connected with any Indian State unless the Governor in his discretion is satisfied that the matter affects the interests of the Provincial Government or of a British subject ordinarily resident in the Province, and has given his consent to the matter being discussed, or to the question being asked ;
- (d) for prohibiting, save with the consent of the Governor in his discretion—
  - (i) the discussion of or the asking of questions on any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince ; or
  - (ii) the discussion, except in relation to estimates of expenditure, of, or the asking of questions on, any matters connected with the tribal areas or arising out of or affecting the administration of an excluded area ; or
  - (iii) the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State or of a member of the ruling family thereof ;

and, if and in so far as any rule so made by the Governor is inconsistent with any rule made by a Chamber, the rule made by the Governor shall prevail.

(2) In a Province having a Legislative Council the Governor, after consultation with the Speaker and the President, may make rules as to the procedure with respect to joint sittings of, and communications between the two Chambers.

The said rules shall make such provision for the purposes specified in the proviso to the preceding subsection as the Governor in his discretion may think fit.

(3) Until rules are made under this section the rules of procedure and standing orders in force immediately before the commencement of this Part of this Act with respect to the Legislative Council of the Province shall have effect in relation to the Legislature of the Province, subject to such modifications and adaptations as may be made therein by the Governor acting in his discretion.

(4) At a joint sitting of two Chambers the President of the Legislative Council, or in his absence such person as may be determined by rules of procedure made under this section, shall preside.

**85.** All proceedings in the Legislature of a Province shall be conducted in the English language ;

Provided that the rules of procedure of the Chamber or Chambers, and the rules, if any, with respect to joint sittings, shall provide for enabling persons unacquainted, or not sufficiently acquainted, with the English language to use another language.

English to  
be used in  
Provincial  
Legisla-  
tures.

Restrictions  
on discus-  
sion in the  
Legislature.

**86.** (1) No discussion shall take place in a Provincial Legislature with respect to the conduct of any judge of the Federal Court or of a High Court in the discharge of his duties.

In this subsection the reference to a High Court shall be construed as including a reference to a court in a Federated State which is a High Court for any of the purposes of Part IX of this Act.

(2) If the Governor in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Provincial Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof, he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill, clause or amendment, and effect shall be given to the direction.

Courts not  
to inquire  
into pro-  
ceedings of  
the Legis-  
lature.

**87.** (1) The validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

#### CHAPTER IV.

##### LEGISLATIVE POWERS OF GOVERNOR.

Power of  
Governor to  
promulgate  
ordinances  
during  
recess of  
Legislature.

**88.** (1) If at any time when the Legislature of a Province is not in session the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require :

Provided that the Governor—

- (a) shall exercise his individual judgment as respects the promulgation of any ordinance under this section, if a Bill containing the same provisions would under this Act have required his or the Governor-General's previous sanction to the introduction thereof into the Legislature ; and
- (b) shall not without instructions from the Governor-General, acting in his discretion, promulgate any such ordinance, if a Bill containing the same provisions would under this Act have required the Governor-General's previous sanction for the introduction thereof into the Legislature, or if he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the Governor-General.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or, if a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council ;

(b) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature assented to by the Governor ; and

(c) may be withdrawn at any time by the Governor.

(3) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature assented to by the Governor, it shall be void.

**89.** (1) If at any time the Governor of a Province is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion, or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require.

Power of Governor to promulgate ordinances at any time with respect to certain subjects.

(2) An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature ;

(b) may be withdrawn at any time by the Governor ; and

(c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.

(4) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature, it shall be void :

Provided that for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of the



Federal Legislature, an ordinance promulgated under this section shall be deemed to be an Act of the Provincial Legislature which has been reserved for the consideration of the Governor-General and assented to by him.

(5) The functions of the Governor under this section shall be exercised by him in his discretion but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion :

Provided that, if it appears to the Governor that it is impracticable to obtain in time the concurrence of the Governor-General, he may promulgate an ordinance without the concurrence of the Governor-General, but in that case the Governor-General in his discretion may direct the Governor to withdraw the ordinance and the ordinance shall be withdrawn accordingly.

Power of  
Governor in  
certain cir-  
cumstances  
to enact  
Acts.

**90.** (1) If at any time it appears to the Governor that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to the Chamber or Chambers of the Legislature explain the circumstances which in his opinion render legislation essential and either—

(a) enact forthwith as a Governor's Act a Bill containing such provisions as he considers necessary ; or

(b) attach to his message a draft of the Bill which he considers necessary.

(2) Where the Governor takes such action as is mentioned in paragraph (b) of the preceding subsection, he may, at any time after the expiration of one month, enact, as a Governor's Act, the Bill proposed by him to the Chamber or Chambers either in the form of the draft communicated to them, or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by the Chamber or either of the Chambers with reference to the Bill or to amendments suggested to be made therein.

(3) A Governor's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Provincial Legislature assented to by the Governor and, if and so far as it makes any provision which would not be valid if enacted in an Act of that Legislature, shall be void :

Provided that, for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of the Federal Legislature, a Governor's Act shall be deemed to be an Act reserved for the consideration of the Governor-General and assented to by him.

(4) Every Governor's Act shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.

(5) The functions of the Governor under this section shall be exercised by him in his discretion, but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion.

## CHAPTER V.

## EXCLUDED AREAS AND PARTIALLY EXCLUDED AREAS.

**91.** (1) In this Act the expressions “excluded area” and “partially excluded area” mean respectively such areas as His Majesty may by Order in Council declare to be excluded areas or partially excluded areas.

Excluded areas and partially excluded areas.

The Secretary of State shall lay the draft of the Order which it is proposed to recommend His Majesty to make under this subsection before Parliament within six months from the passing of this Act.

(2) His Majesty may at any time by Order in Council—

- (a) direct that the whole or any specified part of an excluded area shall become, or become part of, a partially excluded area ;
- (b) direct that the whole or any specified part of a partially excluded area shall cease to be a partially excluded area or a part of such an area ;
- (c) alter, but only by way of rectification of boundaries, any excluded or partially excluded area ;
- (d) on any alteration of the boundaries of a Province, or the creation of a new Province, declare any territory not previously included in any Province to be, or to form part of, an excluded area or a partially excluded area,

and any such Order may contain such incidental and consequential provisions as appear to His Majesty to be necessary and proper, but save as aforesaid the Order in Council made under subsection (1) of this section shall not be varied by any subsequent Order.

**92.** (1) The executive authority of a Province extends to excluded and partially excluded areas therein, but, notwithstanding anything in this Act, no Act of the Federal Legislature or of the Provincial Legislature, shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

Administration of excluded areas and partially excluded areas.

(2) The Governor may make regulations for the peace and good government of any area in a Province which is for the time being an excluded area, or a partially excluded area, and any regulations so made may repeal or amend any Act of the Federal Legislature or of the Provincial Legislature, or any existing Indian law, which is for the time being applicable to the area in question.

Regulations made under this subsection shall be submitted forthwith to the Governor-General and until assented to by him in his discretion shall have no effect, and the provisions of this Part of this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such regulations

assented to by the Governor-General as they apply in relation to Acts of a Provincial Legislature assented to by him.

(3) The Governor shall, as respects any area in a Province which is for the time being an excluded area, exercise his functions in his discretion.

#### CHAPTER VI.

##### PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY.

Power of  
Governor  
to issue  
Proclama-  
tions.

**93.** (1) If at any time the Governor of a Province is satisfied that a situation has arisen in which the government of the Province cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—

- (a) declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion ;
- (b) assume to himself all or any of the powers vested in or exercisable by any Provincial body or authority ;

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Provincial body or authority :

Provided that nothing in this subsection shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend, either in whole or in part, the operation of any provision of this Act relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation under this section—

- (a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament ;
- (b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months :

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this subsection it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years.

(4) If the Governor, by a Proclamation under this section, assumes to himself any power of the Provincial Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by

Act of the appropriate Legislature, and any reference in this Act to Provincial Acts, Provincial laws, or Acts or laws of a Provincial Legislature shall be construed as including a reference to such a law.

(5) The functions of the Governor under this section shall be exercised by him in his discretion and no Proclamation shall be made by a Governor under this section without the concurrence of the Governor General in his discretion.

## PART IV.<sup>1</sup>

### THE CHIEF COMMISSIONERS' PROVINCES.

**94.** (1) The following shall be the Chief Commissioners' Provinces, that is to say, the heretofore existing Chief Commissioners' Provinces of British Baluchistan, Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Islands, the area known as Panth Piploda, and such other Chief Commissioners' Provinces as may be created under this Act.

(2) Aden shall cease to be part of India.

(3) A Chief Commissioner's Province shall be administered by the Governor-General acting to such extent as he thinks fit, through a Chief Commissioner to be appointed by him in his discretion.

**95.** (1) In directing and controlling the administration of British Baluchistan, the Governor-General shall act in his discretion.

(2) The executive authority of the Federation extends to British Baluchistan as it extends to other Chief Commissioners' Provinces, but, notwithstanding anything in this Act, no Act of the Federal Legislature shall apply to British Baluchistan unless the Governor-General in his discretion by public notification so directs, and the Governor-General in giving such a direction with respect to any Act may direct that the Act shall in its application to the Province, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

(3) The Governor-General may in his discretion make regulations for the peace and good government of British Baluchistan, and any regulations so made may repeal or amend any Act of the Federal Legislature or any existing Indian law which is for the time being applicable to the Province and, when promulgated by the Governor-General, shall have the same force and effect as an Act of the Federal Legislature which applies to the Province.

The provisions of Part II of this Act relating to the power of His Majesty to disallow Acts shall apply in relation to any such regulations as they apply in relation to Acts of the Federal Legislature assented to by the Governor-General.

<sup>1</sup> Part IV came into force on the 1st April, 1937, see the Government of India (Commencement and Transitory Provisions) Order, 1936, para. 3.

The Andaman and Nicobar Islands.

**96.** The provisions of subsection (3) of the last preceding section shall apply in relation to the Andaman and Nicobar Islands as they apply in relation to British Baluchistan.

Coorg.

**97.** Until other provision is made by His Majesty in Council, the constitution, powers and functions of the Coorg Legislative Council, and the arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg, shall continue unchanged.

Provisions as to police rules &c. and as to crimes of violence intended to overthrow the Government.

**98.** The provisions of Part III of this Act with respect to police rules and with respect to crimes of violence intended to overthrow the government, including the provisions thereof relating to the non-disclosure of certain records and information, shall apply in relation to Chief Commissioners' Provinces as they apply in relation to Governors' Provinces, with the substitution for references to the Governor and the Chamber or Chambers of the Provincial Legislature of references to the Governor-General and the Chambers of the Federal Legislature.

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## PART V.<sup>1</sup>

### LEGISLATIVE POWERS.

#### CHAPTER I.

#### DISTRIBUTION OF POWERS.

Extent of Federal and Provincial laws.

**99.** (1) Subject to the provisions of this Act, the Federal Legislature may make laws for the whole or any part of British India or for any Federated State, and a Provincial Legislature may make laws for the Province or for any part thereof.

(2) Without prejudice to the generality of the powers conferred by the preceding subsection, no Federal law shall, on the ground that it would have extra territorial operation, be deemed to be invalid in so far as it applies—

- (a) to British subjects and servants of the Crown in any part of India ;  
or
- (b) to British subjects who are domiciled in any part of India wherever they may be ; or
- (c) to, or to persons on, ships or aircraft registered in British India or any Federated State wherever they may be ; or
- (d) in the case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be ; or

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<sup>1</sup> Part V came into force on the 1st April, 1937, *see* the Government of India (Commencement and Transitory Provisions) Order, 1936, para. 3.

- (e) in the case of a law for the regulation or discipline of any naval, military, or air force raised in British India, to members of, and persons attached to, employed with or following, that force, wherever they may be.

**100.** (1) Notwithstanding anything in the two next succeeding subsections, the Federal Legislature has, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to this Act (hereinafter called the "Federal Legislative List"). Subject matter of Federal and Provincial laws.

(2) Notwithstanding anything in the next succeeding subsection, the Federal Legislature, and, subject to the preceding subsection, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the "Concurrent Legislative List").

(3) Subject to the two preceding subsections the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the "Provincial Legislative List").

(4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof.

**101.** Nothing in this Act shall be construed as empowering the Federal Legislature to make laws for a Federated State otherwise than in accordance with the Instrument of Accession of that State and any limitations contained therein. Extent of power to legislate for States.

**102.** (1) Notwithstanding anything in the preceding sections of this chapter, the Federal Legislature shall, if the Governor-General has in his discretion declared by Proclamation (in this Act referred to as a "Proclamation of Emergency") that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List: Power of Federal Legislature to legislate if an emergency is proclaimed.

Provided that no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency.

(2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature has under this section power to make, the Federal law, whether passed before or after the Provincial law, shall prevail,

and the Provincial law shall to the extent of the repugnancy, but so long only as the Federal law continues to have effect, be void.

(3) A Proclamation of Emergency—

- (a) may be revoked by a subsequent Proclamation ;
- (b) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament ; and
- (c) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by Resolutions of both Houses of Parliament.

(4) A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period.

Power of  
Federal  
Legislature  
to legislate  
for two or  
more Pro-  
vinces by  
consent.

**103.** If it appears to the Legislatures of two or more Provinces to be desirable that any of the matters enumerated in the Provincial Legislative List should be regulated in those Provinces by Act of the Federal Legislature, and if resolutions to that effect are passed by all the Chambers of those Provincial Legislatures, it shall be lawful for the Federal Legislature to pass an Act for regulating that matter accordingly, but any Act so passed may, as respects any Province to which it applies, be amended or repealed by an Act of the Legislature of that Province.

Residual  
powers of  
legislation.

**104.** (1) The Governor-General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such list, and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

(2) In the discharge of his functions under this section the Governor-General shall act in his discretion.

Application  
of Naval  
Discipline  
Act to  
Indian  
naval  
forces.

**105.** (1) Without prejudice to the provisions of this Act with respect to the legislative powers of the Federal Legislature, provision may be made by Act of that Legislature for applying the Naval Discipline Act to the Indian naval forces and, so long as provision for that purpose is made either by an Act of the Federal Legislature or by an existing Indian law, the Naval Discipline Act as so applied shall have effect as if references therein to His Majesty's navy and His Majesty's ships included references to His Majesty's Indian navy and the ships thereof, subject however—

- (a) in the application of the said Act to the forces and ships of the Indian navy and to the trial by court martial of officers and men belonging thereto, to such modifications and adaptations, if any, as may be, or may have been, made by the Act of the Federal or

Indian Legislature to adapt the said Act to the circumstances of India, including such adaptations as may be, or may have been, so made for the purpose of authorising or requiring anything which under the said Act is to be done by or to the Admiralty, or the Secretary of the Admiralty, to be done by or to the Governor-General, or some person authorised to act on his behalf; and

- (b) in the application of the said Act to the forces and ships of His Majesty's navy other than those of the Indian navy, to such modifications and adaptations as may be made, or may have been made under section sixty-six of the Government of India Act, by His Majesty in Council for the purpose of regulating the relations of those forces and ships to the forces and the ships of the Indian navy.

(2) Notwithstanding anything in this Act or in any Act of any Legislature in India, where any forces and ships of the Indian navy have been placed at the disposal of the Admiralty, the Naval Discipline Act shall have effect as if references therein to His Majesty's navy and His Majesty's ships included references to His Majesty's Indian navy and the ships thereof, without any such modifications or adaptations as aforesaid.

**106.** (1) The Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any Province except with the previous consent of the Governor, or for a Federated State except with the previous consent of the Ruler thereof.

Provisions as to legislation for giving effect to international agreements.

(2) So much of any law as is valid only by virtue of any such entry as aforesaid may be repealed by the Federal Legislature and may, on the treaty or agreement in question ceasing to have effect, be repealed as respects any Province or State by a law of that Province or State.

(3) Nothing in this section applies in relation to any law which the Federal Legislature has power to make for a Province or, as the case may be, a Federated State, by virtue of any other entry in the Federal or the Concurrent Legislative List as well as by virtue of the said entry.

**107.** (1) If any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature is competent to enact or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Federal law, whether passed before or after the Provincial law, or, as the case may be, the existing Indian law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void.

Inconsistency between Federal laws and Provincial laws.

(2) Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Federal law or an existing Indian law with respect to that matter, then, if the Provincial law, having been reserved for the consideration



of the Governor-General or for the signification of His Majesty's pleasure, has received the assent of the Governor-General or of His Majesty, the Provincial law shall in that Province prevail, but nevertheless the Federal Legislature may at any time enact further legislation with respect to the same matter :

Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which, having been so reserved, has received the assent of the Governor-General or of His Majesty, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(3) If any provision of a law of a Federated State is repugnant to a Federal law which extends to that State, the Federal law, whether passed before or after the law of the State, shall prevail and the law of the State shall, to the extent of the repugnancy, be void.

## CHAPTER II.

### RESTRICTIONS ON LEGISLATIVE POWERS.

Sanction of Governor-General or Governor required for certain legislative proposals.

**108.** (1) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature, any Bill or amendment which—

- (a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India ; or
- (b) repeals, amends or is repugnant to any Governor-General's or Governor's Act, or any ordinance promulgated in his discretion by the Governor-General or a Governor ; or
- (c) affects matters as respects which the Governor-General is, by or under this Act, required to act in his discretion ; or
- (d) repeals, amends or affects any Act relating to any police force ; or
- (e) affects the procedure for criminal proceedings in which European British subjects are concerned ; or
- (f) subjects persons not resident in British India to greater taxation than persons resident in British India or subjects companies not wholly controlled and managed in British India to greater taxation than companies wholly controlled and managed therein ; or
- (g) affects the grant of relief from any Federal tax on income in respect of income taxed or taxable in the United Kingdom.

(2) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, a Chamber of a Provincial Legislature any Bill or amendment which—

- (a) repeals, amends, or is repugnant to any provisions of any Act of Parliament extending to British India ; or

- (b) repeals, amends or is repugnant to any Governor-General's Act, or any ordinance promulgated in his discretion by the Governor-General ; or
- (c) affects matters as respects which the Governor-General is by or under this Act, required to act in his discretion ; or
- (d) affects the procedure for criminal proceedings in which European British subjects are concerned ;

and unless the Governor of the Province in his discretion thinks fit to give his previous sanction, there shall not be introduced or moved any Bill or amendment which—

- (i) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor ; or
- (ii) repeals, amends or affects any Act relating to any police force.

(3) Nothing in this section affects the operation of any other provision in this Act which requires the previous sanction of the Governor-General or of a Governor to the introduction of any Bill or the moving of any amendment.

**109.** (1) Where under any provision of this Act the previous sanction or recommendation of the Governor-General or of a Governor is required to the introduction or passing of a Bill or the moving of an amendment, the giving of the sanction or recommendation shall not be construed as precluding him from exercising subsequently in regard to the Bill in question any powers conferred upon him by this Act with respect to the withholding of assent to, or the reservation of, Bills.

*Requirements as to sanctions and recommendations to be regarded as matters of procedure only.*

(2) No Act of the Federal Legislature or a Provincial Legislature, and no provision in any such Act, shall be invalid by reason only that some previous sanction or recommendation was not given, if assent to that Act was given—

- (a) where the previous sanction or recommendation required was that of the Governor, either by the Governor, by the Governor-General, or by His Majesty ;
- (b) where the previous sanction or recommendation required was that of the Governor-General, either by the Governor-General or by His Majesty.

**110.** Nothing in this Act shall be taken—

*Savings.*

- (a) to affect the power of Parliament to legislate for British India, or any part thereof ; or
- (b) to empower the Federal Legislature, or any Provincial Legislature—
  - (i) to make any law affecting the Sovereign or the Royal Family, or the Succession to the Crown, or the sovereignty, dominion or suzerainty of the Crown in any part of India, or the law of British nationality, or the Army Act, the Air Force Act, or the Naval Discipline Act, or the law of Prize or Prize courts ;

or

(ii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law amending any provision of this Act, or any Order in Council made thereunder, or any rules made under this Act by the Secretary of State, or by the Governor-General or a Governor in his discretion, or in the exercise of his individual judgment; or

(iii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law derogating from any prerogative right of His Majesty to grant special leave to appeal from any court.

### CHAPTER III.

#### PROVISIONS WITH RESPECT TO DISCRIMINATION, ETC.

British  
subjects  
domiciled in  
the United  
Kingdom.

**111.** (1) Subject to the provisions of this chapter, a British subject domiciled in the United Kingdom shall be exempt from the operation of so much of any Federal or Provincial law as—

- (a) imposes any restriction on the right of entry into British India; or
- (b) imposes by reference to place of birth, race, descent, language, religion, domicile, residence or duration of residence, any disability, liability, restriction or condition in regard to travel, residence, the acquisition, holding, or disposal of property, the holding of public office, or the carrying on of any occupation, trade, business or profession:

Provided that no person shall by virtue of this subsection be entitled to exemption from any such restriction, condition, liability or disability as aforesaid if and so long as British subjects domiciled in British India are by or under the law of the United Kingdom subject in the United Kingdom to a like restriction, condition, liability, or disability imposed in regard to the same subject matter by reference to the same principle of distinction.

(2) For the purposes of the preceding subsection, a provision, whether of the law of British India or of the law of the United Kingdom, empowering any public authority to impose quarantine regulations, or to exclude or deport individuals, wherever domiciled, who appear to that authority to be undesirable persons, shall not be deemed to be a restriction on the right of entry.

(3) Notwithstanding anything in this section, if the Governor-General or, as the case may be, the Governor of any Province, by public notification, certifies that for the prevention of any grave menace to the peace or tranquillity of any part of India or, as the case may be, of any part of the Province, or for the purpose of combating crimes of violence intended to overthrow the Government, it is expedient that the operation of the provisions of subsection (1) of this section should be wholly or partially suspended in relation to any law, then while the notification is in force the operation of those provisions shall be suspended accordingly.

The functions of the Governor-General and of a Governor under this subsection shall be exercised by him in his discretion.

**112.** (1) No Federal or Provincial law which imposes any liability to tax-<sup>Taxation.</sup> tion shall be such as to discriminate against British subjects domiciled in the United Kingdom or Burma or companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom or Burma, and any law passed or made in contravention of this section shall to the extent of the contravention, be invalid.

(2) Without prejudice to the generality of the foregoing provisions, a law shall be deemed to be such as to discriminate against such persons or companies as aforesaid if it would result in any of them being liable to greater taxation than that to which they would be liable if domiciled in British India or incorporated by or under the laws of British India, as the case may be.

(3) For the purposes of this section a company incorporated before the commencement of Part III of this Act under any existing Indian law and registered thereunder in Burma shall be deemed to be a company incorporated by or under the laws of Burma.

**113.** (1) Subject to the following provisions of this chapter, a company<sup>Companies incorporated in the United Kingdom.</sup> incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom, and the members of the governing body of any such company and the holders of its shares, stock, debentures, debenture stock or bonds, and its officers, agents, and servants, shall be deemed to comply with so much of any Federal or Provincial law as imposes in regard to companies carrying on or proposing to carry on business in British India requirements or conditions relating to or connected with—

- (a) the place of incorporation of a company or the situation of its registered office, or the currency in which its capital or loan capital is expressed ; or
- (b) the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of the holders of its shares, stock, debentures, debenture stock or bonds, or of its officers, agents or servants :

Provided that no company or person shall by virtue of this section be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated by or under the laws of British India and carrying on or proposing to carry on business in the United Kingdom.

(2) If and in so far as any total or partial exemption from, or preferential treatment in respect of, taxation imposed on companies by or under any Federal or Provincial law depends on compliance with conditions as to any of the matters mentioned in subsection (1) of this section, any company

incorporated by or under the laws of the United Kingdom carrying on business in British India shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under the laws of British India and carrying on business in the United Kingdom does not depend on compliance with conditions as to any of the matters so mentioned.

**Companies  
incor-  
porated in  
India.**

**114.** (1) Subject to the following provisions of this chapter, a British subject domiciled in the United Kingdom shall be deemed to comply with so much of any Federal or Provincial law as imposes in regard to companies incorporated or proposed to be incorporated, whether before or after the passing of this Act, by or under the laws of British India, any requirements or conditions relating to, or connected with, the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of the holders of its shares, stock, debentures, debenture stock or bonds, or of its officers, agents or servants :

Provided that no person shall by virtue of this section be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated or proposed to be incorporated by or under the laws of the United Kingdom on British subjects domiciled in British India.

(2) If and in so far as, in the case of any such companies as aforesaid, any total or partial exemption from, or preferential treatment in respect of, taxation imposed by or under any Federal or Provincial law depends on compliance with conditions as to any of the matters aforesaid, then, so far as regards such members of its governing body and such of the holders of its shares, stock, debentures, debenture stock or bonds, and such of its officers, agents, and servants, as are British subjects domiciled in the United Kingdom, any such company shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under those laws does not, as regards such of the members of a company's governing body, or such of the holders of its shares, stock, debentures, debenture stock or bonds, or such of its officers, agents, or servants, as are British subjects domiciled in British India, depend on compliance with conditions as to any of the matters aforesaid.

(3) For the purposes of this section, but not for the purposes of any other provision of this chapter, a company incorporated before the commencement of Part III of this Act under any existing Indian law and registered thereunder in Burma, shall be deemed to be a company incorporated by or under the laws of British India.

**Ships and  
aircraft.**

**115.** (1) No ship registered in the United Kingdom shall be subjected by or under any Federal or Provincial law to any treatment affecting either

the ship herself, or her master, officers, crew, passengers or cargo, which is discriminatory in favour of ships registered in British India, except in so far as ships registered in British India are for the time being subjected by or under any law of the United Kingdom to treatment of a like character which is similarly discriminatory in favour of ships registered in the United Kingdom.

(2) This section shall apply in relation to aircraft as it applies in relation to ships.

(3) The provisions of this section are in addition to and not in derogation of the provisions of any of the preceding sections of this chapter.

**116.** (1) Notwithstanding anything in any Act of the Federal Legislature or of a Provincial Legislature, companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom and carrying on business in India shall be eligible for any grant, bounty or subsidy payable out of the revenues of the Federation or of a Province for the encouragement of any trade or industry to the same extent as companies incorporated by or under the laws of British India are eligible therefor : Subsidies for the encouragement of trade or industry.

Provided that this subsection shall not apply in relation to any grant, bounty or subsidy for the encouragement of any trade or industry, if and so long as under the law of the United Kingdom for the time being in force companies incorporated by or under the laws of British India and carrying on business in the United Kingdom are not equally eligible with companies incorporated by or under the laws of the United Kingdom for the benefit of any grant, bounty or subsidy payable out of public moneys in the United Kingdom for the encouragement of the same trade or industry.

(2) Notwithstanding anything in this chapter, an Act of the Federal Legislature or of a Provincial Legislature may require, in the case of a company which at the date of the passing of that Act was not engaged in British India in that branch of trade or industry which it is the purpose of the grant, bounty or subsidy to encourage, that the company shall not be eligible for any grant, bounty or subsidy under the Act unless and until—

- (a) the company is incorporated by or under the laws of British India or, if the Act so provides, is incorporated by or under the laws of British India or of a Federated State ; and
- (b) such proportion, not exceeding one half, of the members of its governing body as the Act may prescribe, are British subjects domiciled in India or, if the Act so provides are either British subjects domiciled in India or subjects of a Federated State ; and
- (c) the company gives such reasonable facilities as may be so prescribed for the training of British subjects domiciled in India or, if the Act so provides, of British subjects domiciled in India or subjects of a Federated State.

(3) For the purposes of this section a company incorporated by or under the laws of the United Kingdom shall be deemed to be carrying on business in India if it owns ships which habitually trade to and from ports in India.

Supple-  
mental.

**117.** The foregoing provisions of this chapter shall apply in relation to any ordinance, order, byelaw, rule or regulation passed or made after the passing of this Act and having by virtue of any existing Indian law or of any law of the Federal or any Provincial Legislature, the force of law as they apply in relation to Federal and Provincial laws, but, save as aforesaid, nothing in those provisions shall affect the operation of any existing Indian law.

Power to  
secure reci-  
procal treat-  
ment by  
convention.

**118.** (1) If after the establishment of the Federation a convention is made between His Majesty's Government in the United Kingdom and the Federal Government whereby similarity of treatment is assured in the United Kingdom to British subjects domiciled in British India and to companies incorporated by or under the laws of British India and in British India to British subjects domiciled in the United Kingdom and to companies incorporated by or under the laws of the United Kingdom, respectively, in respect of the matters, or any of the matters, with regard to which provision is made in the preceding sections of this chapter, His Majesty may, if he is satisfied that all necessary legislation has been enacted both in the United Kingdom and in India for the purpose of giving effect to the convention, by Order in Council declare that the purposes of those sections are to such extent as may be specified in the Order sufficiently fulfilled by that convention and legislation, and while any such Order is in force, the operation of those sections shall to that extent be suspended.

(2) An Order in Council under this section shall cease to have effect if and when the convention to which it relates expires or is terminated by either party thereto.

Professional  
and techni-  
cal qualifica-  
tions in  
general.

**119.** (1) No Bill or amendment which prescribes, or empowers any authority to prescribe, the professional or technical qualifications which are to be requisite for any purpose in British India or which imposes, or empowers any authority to impose, by reference to any professional or technical qualification, any disability, liability, restriction or condition in regard to the practising of any profession, the carrying on of any occupation, trade or business, or the holding of any office in British India, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(2) The Governor-General or a Governor shall not give his sanction for the purposes of the preceding subsection unless he is satisfied that the proposed legislation is so framed as to secure that no person who, immediately before the coming into operation of any disability, liability, restriction or condition to be imposed by or under that legislation, was lawfully practising any profession, carrying on any occupation, trade, or business, or holding any office in British India shall, except in so far as may be necessary in the interests of the public, be debarred from continuing to practise that profession, carry on

that occupation, trade or business, or hold that office, or from doing anything in the course of that profession, occupation, trade or business, or in the discharge of the duties of that office which he could lawfully have done if that disability, liability, restriction or condition had not come into operation.

(3) All regulations made under the provisions of any Federal or Provincial law which prescribe the professional or technical qualifications which are to be requisite for any purpose in British India or impose, by reference to any professional or technical qualification, any disability, liability, restriction or condition in regard to the practising of any profession, the carrying on of any occupation, trade or business, or the holding of any office in British India, shall, not less than four months before they are expressed to come into operation, be published in such manner as may be required by general or special directions of the Governor-General, or, as the case may be, the Governor, and, if within two months from the date of the publication complaint is made to the Governor-General or, as the case may be, the Governor that the regulations or any of them will operate unfairly as against any class of persons affected thereby, the Governor-General or Governor, if he is of opinion that the complaint is well founded, may, at any time before the regulations are expressed to come into operation, by public notification disallow the regulations or any of them.

In this subsection the expression "regulations" includes rules, byelaws, orders and ordinances.

In the discharge of his functions under this subsection the Governor-General or a Governor shall exercise his individual judgment.

(4) If the Governor-General exercising his individual judgment by public notification directs that the provisions of the last preceding subsection shall apply in relation to any existing Indian law, those provisions shall apply in relation to that law accordingly, and the functions which under those provisions are to be performed in relation to a Federal law by the Governor-General and in relation to a Provincial law by the Governor shall, in relation to that existing Indian law, be performed, according as may be directed by the notification, by the Governor-General exercising his individual judgment, by the Governor exercising his individual judgment or partly by the one and partly by the other of them.

**120.** (1) So long as the condition set out in subsection (3) of this section continues to be fulfilled, a British subject domiciled in the United Kingdom or India who, by virtue of a medical diploma granted to him in the United Kingdom, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not by or under any existing Indian law or any law of the Federal or any Provincial Legislature, be excluded from practising, medicine, surgery or midwifery in British India, or in any part thereof, or from being registered as qualified so to do, on any ground other than the ground that the diploma held by him does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and he shall not be so excluded on that ground unless

Medical  
qualifica-  
tions.



a law of the Federation or of the Province, as the case may be, makes provision for securing—

- (a) that no proposal for excluding the holders of any particular diploma from practice or registration shall become operative until the expiration of twelve months after notice thereof has been given to the Governor-General and to the University or other body granting that diploma; and
- (b) that such a proposal shall not become operative or, as the case may be, shall cease to operate, if the Privy Council on an application made to them under the next succeeding subsection determine that the diploma in question ought to be recognised as furnishing such a sufficient guarantee as aforesaid.

(2) If any University or other body in the United Kingdom which grants a medical diploma, or any British subject who holds such a diploma, is aggrieved by the proposal to exclude holders of that diploma from practice or registration in British India, that body or person may make an application to the Privy Council, and the Privy Council, after giving to such authorities and persons both in British India and in the United Kingdom as they think fit an opportunity of tendering evidence or submitting representations in writing, shall determine whether the diploma in question does or does not, furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and shall notify their determination to the Governor-General, who shall communicate it to such authorities, and cause it to be published in such manner, as he thinks fit.

(3) The condition referred to in subsection (1) of this section is that British subjects domiciled in India who hold a medical diploma granted after examination in British India shall not be excluded from practising medicine, surgery or midwifery in the United Kingdom or from being registered therein as qualified medical practitioners, except on the ground that that diploma does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and shall only be excluded on that ground so long as the law of the United Kingdom makes provision for enabling any question as to the sufficiency of that diploma to be referred to and decided by the Privy Council.

(4) A medical practitioner entitled to practise or to be registered in British India by virtue of a diploma granted in the United Kingdom, or in the United Kingdom by virtue of a diploma granted in British India, shall not in the practice of his profession be subjected to any liability, disability, restriction or condition to which persons entitled to practise by virtue of diplomas granted in the other country are not subject.

(5) The foregoing provisions of this section shall, subject to the modifications hereinafter mentioned, apply in relation to British subjects domiciled in Burma who, by virtue of medical diplomas granted to them in Burma or the United Kingdom, are, or are entitled to be, registered in the United Kingdom as qualified medical practitioners as they apply in relation to British

subjects domiciled in the United Kingdom who, by virtue of medical diplomas granted in the United Kingdom, are, or are entitled to be, registered in the United Kingdom as qualified medical practitioners.

The said modifications are as follows, that is to say,—

- (a) subsection (3) shall not apply and the reference in subsection (1) to the condition set out therein shall be deemed to be omitted ;
- (b) any reference in subsection (2) or subsection (4) to the United Kingdom shall be construed as a reference to Burma.

(6) Nothing in this section shall be construed as affecting any power of any recognised authority in the United Kingdom or British India to suspend or debar any person from practice on the ground of misconduct, or to remove any person from a register on that ground.

(7) In this section the expression “ diploma ” includes any certificate, degree, fellowship, or other document or status granted to persons passing examinations.

**121.** A person who holds a commission from His Majesty as a medical officer in the Indian Medical Service or any other branch of His Majesty’s forces and is on the active list shall by virtue of that commission be deemed to be qualified to practise medicine, surgery and midwifery in British India, and be entitled to be registered in British India or any part thereof as so qualified.

Officers of  
Indian  
Medical  
Service, &c.

## PART VI.<sup>1</sup>

### ADMINISTRATIVE RELATIONS BETWEEN FEDERATION, PROVINCES AND STATES.

#### *General.*

**122.** (1) The executive authority of every Province and Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province or State.

Obligation  
of units and  
Federation.

(2) The reference in subsection (1) of this section to laws of the Federal Legislature shall, in relation to any Province, include a reference to any existing Indian law applying in that Province.

(3) Without prejudice to any of the other provisions of this Part of this Act, in the exercise of the executive authority of the Federation in any Province or Federated State regard shall be had to the interests of that Province or State.

**123.** (1) The Governor-General may direct the Governor of any Province to discharge as his agent, either generally or in any particular case, such functions in and in relation to the tribal areas as may be specified in the direction.

Governor-  
General may  
require  
Governors  
to discharge  
certain  
functions  
as his  
agents.

<sup>1</sup> Part VI came into force on the 1st April, 1937, see the Government of India (Commencement and Transitory Provisions) Order, 1936, para. 3.

(2) If in any particular case it appears to the Governor-General necessary or convenient so to do, he may direct the Governor of any Province to discharge as his agent such functions in relation to defence, external affairs, or ecclesiastical affairs as may be specified in the direction.

(3) In the discharge of any such functions the Governor shall act in his discretion.

Power of Federation to confer powers, &c. on Provinces and States in certain cases.

**124.** (1) Notwithstanding anything in this Act, the Governor-General may, with the consent of the Government of a Province or the Ruler of a Federated State, entrust either conditionally or unconditionally to that Government or Ruler, or to their respective officers, functions in relation to any matter to which the executive authority of the Federation extends.

(2) An Act of the Federal Legislature may, notwithstanding that it relates to a matter with respect to which a Provincial Legislature has no power to make laws, confer powers and impose duties upon a Province or officers and authorities thereof.

(3) An Act of the Federal Legislature which extends to a Federated State may confer powers and impose duties upon the State or officers and authorities thereof to be designated for the purpose by the Ruler.

(4) Where by virtue of this section powers and duties have been conferred or imposed upon a Province or Federated State or officers or authorities thereof, there shall be paid by the Federation to the Province or State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties.

Administration of Federal Acts in Indian States.

**125.** (1) Notwithstanding anything in this Act, agreements may, and if provision has been made in that behalf by the Instrument of Accession of the State, shall, be made between the Governor-General and the Ruler of a Federated State for the exercise by the Ruler or his officers of functions in relation to the administration in his State of any law of the Federal Legislature which applies therein.

(2) An agreement made under this section shall contain provisions enabling the Governor-General in his discretion to satisfy himself, by inspection or otherwise, that the administration of the law to which the agreement relates if carried out in accordance with the policy of the Federal Government and, if he is not so satisfied, the Governor-General, acting in his discretion, may issue such directions to the Ruler as he thinks fit.

(3) All courts shall take judicial notice of any agreement made under this section.

Control of Federation over Province in certain cases.

**126.** (1) The executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation, and the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for that purpose.

(2) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Federal Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions :

Provided that a Bill or amendment which proposes to authorise the giving of any such directions as aforesaid shall not be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(3) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the construction and maintenance of means of communication declared in the direction to be of military importance :

Provided that nothing in this subsection shall be taken as restricting the power of the Federation to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(4) If it appears to the Governor-General that in any Province effect has not been given to any directions given under this section, the Governor-General, acting in his discretion, may issue as orders to the Governor of that Province either the directions previously given or those directions modified in such manner as the Governor-General thinks proper.

(5) Without prejudice to his powers under the last preceding subsection, the Governor-General, acting in his discretion, may at any time issue orders to the Governor of a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or of any part thereof.

**127.** The Federation may, if it deems it necessary to acquire any land situate in a Province for any purpose connected with a matter with respect to which the Federal Legislature has power to make laws, require the Province to acquire the land on behalf, and at the expense, of the Federation or, if the land belongs to the Province, to transfer it to the Federation on such terms as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India.

Acquisition  
of land for  
Federal  
purposes.

**128.** (1) The executive authority of every Federated State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation so far as it is exercisable in the State by virtue of a law of the Federal Legislature which applies therein.

Duty of  
Ruler of a  
State as  
respects  
Federal  
subjects.

(2) If it appears to the Governor-General that the Ruler of any Federated State has in any way failed to fulfil his obligations under the preceding subsection, the Governor-General, acting in his discretion, may after considering any representations made to him by the Ruler issue such directions to the Ruler as he thinks fit :

Provided that, if any question arises under this section as to whether the executive authority of the Federation is exercisable in a State with respect to any matter or as to the extent to which it is so exercisable, the question

may, at the instance either of the Federation or the Ruler, be referred to the Federal Court for determination by that Court in the exercise of its original jurisdiction under this Act.

*Broadcasting.*

Broad-  
casting.

**129.** (1) The Federal Government shall not unreasonably refuse to entrust to the Government of any Province or the Ruler of any Federated State such functions with respect to broadcasting as may be necessary to enable that Government or Ruler—

- (a) to construct and use transmitters in the Province or State ;
- (b) to regulate, and impose fees in respect of, the construction and use of transmitters and the use of receiving apparatus in the Province or State :

Provided that nothing in this subsection shall be construed as requiring the Federal Government to entrust to any such Government or Ruler any control over the use of transmitters constructed or maintained by the Federal Government or by persons authorised by the Federal Government, or over the use of receiving apparatus by persons so authorised.

(2) Any functions so entrusted to a Government or Ruler shall be exercised subject to such conditions as may be imposed by the Federal Government, including, notwithstanding anything in this Act, any conditions with respect to finance, but it shall not be lawful for the Federal Government so to impose any conditions regulating the matter broadcast by, or by authority of, the Government or Ruler.

(3) Any Federal laws which may be passed with respect to broadcasting shall be such as to secure that effect can be given to the foregoing provisions of this section.

(4) If any question arises under this section whether any conditions imposed on any such Government or Ruler are lawfully imposed or whether any refusal by the Federal Government to entrust functions is unreasonable, the question shall be determined by the Governor-General in his discretion.

(5) Nothing in this section shall be construed as restricting the powers conferred on the Governor-General by this Act for the prevention of any grave menace to the peace or tranquillity of India or any part thereof, or as prohibiting the imposition on Governments or Rulers of such conditions regulating matter broadcast as appear to be necessary to enable the Governor-General to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment.

*Interference with Water Supplies.*

Complaints  
as to in-  
terference  
with water  
supplies.

**130.** If it appears to the Government of any Governor's Province or to the Ruler of any Federated State that the interests of that Province or State, or of any of the inhabitants thereof, in the water from any natural source of

supply in any Governor's or Chief Commissioner's Province or Federated State, have been, or are likely to be, affected prejudicially by—

- (a) any executive action or legislation taken or passed, or proposed to be taken or passed; or
- (b) the failure of any authority to exercise any of their powers,

with respect to the use, distribution or control of water from that source, the Government or Ruler may complain to the Governor-General.

**131.** (1) If the Governor-General receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a Commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law, as he thinks fit, and request that Commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or such of those matters as he may refer to them. Decision of complaints.

(2) A Commission so appointed shall investigate the matters referred to them and present to the Governor-General a report setting out the facts as found by them and making such recommendations as they think proper.

(3) If it appears to the Governor-General upon consideration of the Commission's report that anything therein contained requires explanation, or that he needs guidance upon any point not originally referred by him to the Commission, he may again refer the matter to the Commission for further investigation and a further report.

(4) For the purpose of assisting a Commission appointed under this section in investigating any matters referred to them, the Federal Court, if requested by the Commission so to do, shall make such orders and issue such letters of request for the purposes of the proceedings of the Commission as they may make or issue in the exercise of the jurisdiction of the court.

(5) After considering any report made to him by the Commission, the Governor-General shall give such decision and make such order, if any, in the matter of the complaint as he may deem proper :

Provided that if, before the Governor-General has given any decision, the Government of any Province or the Ruler of any State affected request him so to do, he shall refer the matter to His Majesty in Council and His Majesty in Council may give such decision and make such order, if any, in the matter as he deems proper.

(6) Effect shall be given in any Province or State affected to any order made under this section by His Majesty in Council or the Governor-General, and any Act of a Provincial Legislature or of a State which is repugnant to the order shall, to the extent of the repugnancy be void.

(7) Subject as hereinafter provided the Governor-General, on application made to him by the Government of any Province, or the Ruler of any State affected, may at any time, if after a reference to, and report from, a

Commission appointed as aforesaid he considers it proper so to do, vary any decision or order given or made under this section :

Provided that, where the application relates to a decision or order of His Majesty in Council and in any other case if the Government of any Province or the Ruler of any State affected request him so to do, the Governor-General shall refer the matter to His Majesty in Council, and His Majesty in Council may, if he considers proper so to do, vary the decision or order.

(8) An order made by His Majesty in Council or the Governor-General under this section may contain directions as to the Government or persons by whom the expenses of the Commission and any costs incurred by any Province, State or persons in appearing before the Commission are to be paid, and may fix the amount of any expenses or costs to be so paid, and so far as it relates to expenses or costs, may be enforced as if it were an order made by the Federal Court.

(9) The functions of the Governor-General under this section shall be exercised by him in his discretion.

Interference  
with water  
supplies  
of Chief  
Commissioner's  
Province.

**132.** If it appears to the Governor-General that the interests of any Chief Commissioner's Province, or of any of the inhabitants of such a Province, in the water from any natural source of supply in any Governor's Province or Federated State have been or are likely to be affected prejudicially by—

(a) any executive action or legislation taken or passed, or proposed to be taken or passed ; or

(b) the failure of any authority to exercise any of their powers,

with respect to the use, distribution or control of water from that source, he may, if he in his discretion thinks fit, refer the matter to a Commission appointed in accordance with the provisions of the last preceding section and thereupon those provisions shall apply as if the Chief Commissioner's Province were a Governor's Province and as if a complaint with respect to the matter had been made by the Government of that Province to the Governor-General.

Jurisdiction  
of Courts  
excluded.

**133.** Notwithstanding anything in this Act, neither the Federal Court nor any other court shall have jurisdiction to entertain any action or suit in respect of any matter if action in respect of that matter might have been taken under any of the three last preceding sections by the Government of a Province, the Ruler of a State, or the Governor-General.

Ruler of  
State may  
exclude  
application  
of provisions  
as to water  
supply.

**134.** The provisions contained in this Part of this Act with respect to interference with water supplies shall not apply in relation to any Federated State the Ruler whereof has declared in his Instrument of Accession that those provisions are not to apply in relation to his State.

#### *Inter-Provincial Co-operation.*

Provisions  
with respect  
to an Inter-

**135.** If at any time it appears to His Majesty upon consideration of representations addressed to him by the Governor-General that the public interests

would be served by the establishment of an Inter-Provincial Council charged with the duty of— Provincial Council.

- (a) inquiring into and advising upon disputes which may have arisen between Provinces ;
- (b) investigating and discussing subjects in which some or all of the Provinces, or the Federation and one or more of the Provinces, have a common interest ; or
- (c) making recommendations upon any such subject and, in particular recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for His Majesty in Council to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

An Order establishing any such Council may make provision for representatives of Indian States to participate in the work of the Council.

## PART VII.<sup>1</sup>

### FINANCE, PROPERTY, CONTRACTS AND SUITS.

#### CHAPTER I.

#### FINANCE.

#### *Distribution of Revenues between the Federation and the Federal Units.*

**136.** Subject to the following provisions of this chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to Provinces and Federated States, and subject to the provisions of this Act with respect to the Federal Railway Authority, the expression “revenues of the Federation” includes all revenues and public moneys raised or received by the Federation, and the expression “revenues of the Province” includes all revenues and public moneys raised or received by a Province. Meaning of “revenues of Federation” and “revenues of Province”.

**137.** Duties in respect of succession to property other than agricultural land, such stamp duties as are mentioned in the Federal Legislative List, terminal taxes on goods or passengers carried by railway, or air, and taxes on railway fares and freights, shall be levied and collected by the Federation, but the net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners’ Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the Provinces and to the Federated States, if any, within which that duty or tax is leviable in that year, and shall be distributed among Certain succession duties, stamp duties, terminal taxes and taxes on fares and freights.

<sup>1</sup> Part VII came into force on the 1st April, 1937, see the Government of India (Commencement and Transitory Provisions) Order, 1936, para. 3.



the Provinces and those States in accordance with such principles of distribution as may be formulated by Act of the Federal Legislature :

Provided that the Federal Legislature may at any time increase any of the said duties or taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

Taxes on  
income.

**138.** (1) Taxes on income other than agricultural income shall be levied and collected by the Federation, but a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces or to taxes payable in respect of Federal emoluments, shall not form part of the revenues of the Federation, but shall be assigned to the Provinces and to the Federated States, if any, within which that tax is leviable in that year, and shall be distributed among the Provinces and those States in such manner as may be prescribed :

Provided that—

(a) the percentage originally prescribed under this subsection shall not be increased by any subsequent Order in Council ;

(b) the Federal Legislature may at any time increase the said taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

(2) Notwithstanding anything in the preceding subsection, the Federation may retain out of the moneys assigned by that subsection to Provinces and States—

(a) in each year of a prescribed period such sum as may be prescribed ; and

(b) in each year of a further prescribed period a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual reduction :

Provided that—

(i) neither of the periods originally prescribed shall be reduced by any subsequent Order in Council ;

(ii) the Governor-General in his discretion may in any year of the second prescribed period direct that the sum to be retained by the Federation in that year shall be the sum retained in the preceding year, and that the second prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with such representatives of Federal, Provincial and State interests as he may think desirable, nor shall he give any such direction unless he is satisfied that the maintenance of the financial stability of the Federal Government requires him so to do.

(3) Where an Act of the Federal Legislature imposes a surcharge for Federal purposes under this section, the Act shall provide for the payment by each Federated State in which taxes on income are not leviable by the Federation of a contribution to the revenues of the Federation assessed on such basis as may be prescribed with a view to securing that the contribution shall be the equivalent, as near as may be, of the net proceeds which it is estimated would result from the surcharge if it were leviable in that State, and the State shall become liable to pay that contribution accordingly.

(4) In this section—

“taxes on income” does not include a corporation tax;

“prescribed” means prescribed by His Majesty in Council; and

“Federal emoluments” includes all emoluments and pensions payable out of the revenues of the Federation or of the Federal Railway Authority in respect of which income-tax is chargeable.

**139.** (1) Corporation tax shall not be levied by the Federation in any Federated State until ten years have elapsed from the establishment of the Federation. Corporation tax.

(2) Any Federal law providing for the levying of corporation tax shall contain provisions enabling the Ruler of any Federated State in which the tax would otherwise be leviable to elect that the tax shall not be levied in the State, but that in lieu thereof there shall be paid by the State to the revenues of the Federation a contribution as near as may be equivalent to the net proceeds which it is estimated would result from the tax if it were levied in the State.

(3) Where the Ruler of a State so elects as aforesaid, the officers of the Federation shall not call for any information or returns from any corporation in the State, but it shall be the duty of the Ruler thereof to cause to be supplied to the Auditor-General of India such information as the Auditor-General may reasonably require to enable the amount of any such contribution to be determined.

If the Ruler of a State is dissatisfied with the determination as to the amount of the contribution payable by his State in any financial year, he may appeal to the Federal Court, and if he establishes to the satisfaction of that Court that the amount determined is excessive, the Court shall reduce the amount accordingly and no appeal shall lie from the decision of the Court on the appeal.

**140.** (1) Duties on salt, Federal duties of excise and export duties shall be levied and collected by the Federation, but, if an Act of the Federal Legislature so provides, there shall be paid out of the revenues of the Federation to the Provinces and to the Federated States, if any, to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by the Act. Salt duties, excise duties and export duties.

(2) Notwithstanding anything in the preceding subsection, one half, or such greater proportion as His Majesty in Council may determine, of the net proceeds in each year of any export duty on jute or jute products shall not form part of the revenues of the Federation, but shall be assigned to the Provinces or Federated States in which jute is grown in proportion to the respective amounts of jute grown therein.

Prior  
sanction of  
Governor-  
General  
required to  
Bills  
affecting  
taxation  
in which  
Provinces  
are  
interested.

**141.** (1) No Bill or amendment which imposes or varies any tax or duty in which Provinces are interested, or which varies the meaning of the expression "agricultural income" as defined for the purposes of the enactments relating to Indian income-tax, or which affects the principles on which under any of the foregoing provisions of this chapter moneys are or may be distributable to Provinces or States, or which imposes any such Federal surcharge as is mentioned in the foregoing provisions of this chapter, shall be introduced or moved in either Chamber of the Federal Legislature except with the previous sanction of the Governor-General in his discretion.

(2) The Governor-General shall not give his sanction to the introduction of any Bill or the moving of any amendment imposing in any year any such Federal surcharge as aforesaid unless he is satisfied that all practicable economies and all practicable measures for otherwise increasing the proceeds of Federal taxation or the portion thereof retainable by the Federation would not result in the balancing of Federal receipts and expenditure on revenue account in that year.

(3) In this section the expression "tax or duty in which Provinces are interested" means—

(a) a tax or duty the whole or part of the net proceeds whereof are assigned to any Province; or

(b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the revenues of the Federation to any Provinces.

Grants from  
Federation  
to certain  
Provinces.

**142.** Such sums as may be prescribed by His Majesty in Council shall be charged on the revenues of the Federation in each year as grants in aid of the revenues of such Provinces as His Majesty may determine to be in need of assistance, and different sums may be prescribed for different Provinces:

Provided that, except in the case of the North-West Frontier Province, no grant fixed under this section shall be increased by a subsequent Order, unless an address has been presented to the Governor-General by both Chambers of the Federal Legislature for submission to His Majesty praying that the increase may be made.

Savings.

**143.** (1) Nothing in the foregoing provisions of this chapter affects any duties or taxes levied in any Federated State otherwise than by virtue of an Act of the Federal Legislature applying in the State.

(2) Any taxes, duties, cesses or fees which, immediately before the commencement of Part III of this Act, were being lawfully levied by any Provincial Government, municipality or other local authority or body for the purposes

of the Province, municipality, district or other local area under a law in force on the first day of January, nineteen hundred and thirty-five, may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Federal Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature.

**144.** (1) In the foregoing provisions of this chapter "net proceeds" means Calculation of "net proceeds," &c. in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Auditor-General of India, whose certificates shall be final.

(2) Subject as aforesaid, and to any other express provision of this chapter an Act of the Federal Legislature may, in any case where under this Part of this Act the proceeds of any duty or tax are, or may be, assigned to any Province or State, or a contribution is, or may be, made to the revenues of the Federation by any State, provide for the manner in which the proceeds of any duty or tax and the amount of any contribution are to be calculated, for the times in each year and the manner at and in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

*The Crown and the States.*

**145.** There shall be paid to His Majesty by the Federation in each year the sums stated by His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States to be required, whether on revenue account or otherwise, for the discharge of those functions, including the making of any payments in respect of any customary allowances to members of the family or servants of any former Ruler of any territories in India. Expenses of the Crown in connection with Indian States.

**146.** All cash contributions and payments in respect of loans and other payments due from or by any Indian State which, if this Act had not been passed, would have formed part of the revenues of India, shall be received by His Majesty, and shall, if His Majesty has so directed, be placed at the disposal of the Federation, but nothing in this Act shall derogate from the right of His Majesty, if he thinks fit so to do, to remit at any time the whole or any part of any such contributions or payments. Payments from or by Indian States.

**147.** (1) Subject to the provisions of subsection (3) of this section, His Majesty may, in signifying his acceptance of the Instrument of Accession of a State, agree to remit over a period not exceeding twenty years from the date of the accession of the State to the Federation any cash contributions payable by that State. Remission of States' contributions.

(2) Subject as aforesaid, where any territories have been voluntarily ceded to the Crown by a Federated State before the passing of this Act—

(a) in return for specific military guarantees, or

(b) in return for the discharge of the State from obligations to provide military assistance,

there shall, if His Majesty, in signifying his acceptance of the Instrument of Accession of that State so directs, be paid to that State, but in the first-mentioned case on condition that the said guarantees are waived, such sums as in the opinion of His Majesty ought to be paid in respect of any such cession as aforesaid.

(3) Notwithstanding anything in this section—

(a) every such agreement or direction as aforesaid shall be such as to secure that no such remission or payment shall be made by virtue of the agreement or direction until the Provinces have begun to receive moneys under the section of this chapter relating to taxes on income, and, in the case of a remission, that the remission shall be complete before the expiration of twenty years from the date of the accession to the Federation of the State in question, or before the end of the second prescribed period referred to in subsection (2) of the said section, whichever first occurs ; and

(b) no contribution shall be remitted by virtue of any such agreement save in so far as it exceeds the value of any privilege or immunity enjoyed by the State ; and

(c) in fixing the amount of any payments in respect of ceded territories, account shall be taken of the value of any such privilege or immunity.

(4) This section shall apply in the case of any cash contributions the liability for which has before the passing of this Act been discharged by payment of a capital sum or sums, and accordingly His Majesty may agree that the capital sum or sums so paid shall be repaid either by instalments or otherwise, and such repayments shall be deemed to be remissions for the purposes of this section.

(5) In this chapter “ cash contributions ” means—

(a) periodical contributions in acknowledgment of the suzerainty of His Majesty, including contributions payable in connection with any arrangement for the aid and protection of a State by His Majesty, and contributions in commutation of any obligation of a State to provide military assistance to His Majesty, or in respect of the maintenance by His Majesty of a special force for service in connection with a State, or in respect of the maintenance of local military forces or police, or in respect of the expenses of an agent ;

(b) periodical contributions fixed on the creation or restoration of a State, or on a re-grant or increase of territory, including annual payments for grants of land on perpetual tenure or for equalisation of the value of exchanged territory.

(c) periodical contributions formerly payable to another State but now payable to His Majesty by right of conquest, assignment or lapse.

(6) In this chapter “privilege or immunity” means any such right, privilege, advantage or immunity of a financial character as is hereinafter mentioned, that is to say—

- (a) rights, privileges or advantages in respect of or connected with, the levying of sea customs or the production and sale of untaxed salt ;
- (b) sums receivable in respect of the abandonment or surrender of the right to levy internal customs duties, or to produce or manufacture salt, or to tax salt or other commodities or goods in transit, or sums receivable in lieu of grants of free salt ;
- (c) the annual value to the Ruler of any privilege or territory granted in respect of the abandonment or surrender of any such right as is mentioned in the last preceding paragraph ;
- (d) privileges in respect of free service stamps or the free carriage of State mails on government business ;
- (e) the privilege of entry free from customs duties of goods imported by sea and transported in bond to the State in question ; and
- (f) the right to issue currency notes,

not being a right, privilege, advantage or immunity surrendered upon the accession of the State, or one which, in the opinion of His Majesty, for any other reason ought not to be taken into account for the purposes of this chapter.

(7) An Instrument of Accession of a State shall not be deemed to be suitable for acceptance by His Majesty, unless it contains such particulars as appear to His Majesty to be necessary to enable due effect to be given to the provisions of this and the next but one succeeding sections, and in particular provision for determining from time to time the value to be attributed for the purposes of those provisions to any privilege or immunity the value of which is fluctuating or uncertain.

**148.** Any payments made under the last preceding section and any payments heretofore made to any State by the Governor-General in Council or by any Local Government under any agreements made with that State before the passing of this Act, shall be charged on the revenues of the Federation or on the revenues of the corresponding Province under this Act, as the case may be.

Certain payments to Federated States, &c., to be charged on Federal revenues.

**149.** Where under the foregoing provisions of this chapter there is made in any year by the Federation to a Federated State any payment or distribution of, or calculated by reference to, the net proceeds of any duty or tax, the value in and for that year of any privilege or immunity enjoyed by that State in respect of any former or existing source of revenue from a similar duty or tax or from goods of the same kind, being a privilege or immunity which

Value of privileges and immunities to be set off against share of taxes, &c.,

assigned to  
Federated  
States.

has not been otherwise taken into account shall, if and in so far as the Act of the Federal Legislature under which the payment or distribution is made so provides, be set off against the payment or distribution.

*Miscellaneous Financial Provisions.*

Expendi-  
ture defray-  
able out of  
Indian  
revenues.

**150.** (1) No burden shall be imposed on the revenues of the Federation or the Provinces except for the purposes of India or some part of India.

(2) Subject as aforesaid, the Federation or a Province may make grants for any purpose, notwithstanding that the purpose is not one with respect to which the Federal or the Provincial Legislature, as the case may be, may make laws.

Provisions  
as to the  
custody of  
public  
moneys.

**151.** (1) Rules may be made by the Governor-General and by the Governor of a Province for the purpose of securing that all moneys received on account of the revenues of the Federation or of the Province, as the case may be, shall, with such exceptions, if any, as may be specified in the rules, be paid into the public account of the Federation or of the Province, and the rules so made may prescribe, or authorise some person to prescribe, the procedure to be followed in respect of the payment of moneys into the said account, the withdrawal of moneys therefrom, the custody of moneys therein, and any other matters connected with or ancillary to the matters aforesaid.

(2) In the exercise of his powers under this section the Governor-General or a Governor shall exercise his individual judgment.

Exercise by  
Governor-  
General of  
certain  
powers with  
respect to  
Reserve  
Bank.

**152.** (1) The functions of the Governor-General with respect to the following matters shall be exercised by him in his discretion, that is to say—

- (a) the appointment and removal from office of the Governor and Deputy Governors of the Reserve Bank of India, the approval of their salaries and allowances, and the fixing of their terms of office ;
- (b) the appointment of an officiating Governor or Deputy Governor of the Bank ;
- (c) the supersession of the Central Board of the Bank and any action consequent thereon ; and
- (d) the liquidation of the Bank.

(2) In nominating directors of the Reserve Bank of India and in removing from office any director nominated by him, the Governor-General shall exercise his individual judgment.

Previous  
sanction of  
Governor-  
General to  
legislation  
with respect  
to Reserve  
Bank,  
currency and  
coinage.

**153.** No Bill or amendment which affects the coinage or currency of the Federation or the constitution or functions of the Reserve Bank of India shall be introduced into or moved in either Chamber of the Federal Legislature, without the previous sanction of the Governor-General in his discretion.

Exemption  
of certain  
public

**154.** Property vested in His Majesty for purposes of the Government of the Federation shall, save in so far as any Federal law may otherwise provide,,

be exempt from all taxes imposed by, or by any authority within a Province or Federated State :

property  
from taxa-  
tion.

Provided that, until any Federal law otherwise provides, any property so vested which was immediately before the commencement of Part III of this Act liable, or treated as liable, to any such tax, shall, so long as that tax continues, continue to be liable, or to be treated as liable, thereto.

**155.** (1) Subject as hereinafter provided, the Government of a Province and the Ruler of a Federated State shall not be liable to Federal taxation in respect of lands or buildings situate in British India or income accruing arising or received in British India :

Exemption  
of Provincial  
Governments  
and Rulers  
of Federated  
States in  
respect  
of Federal  
taxation.

Provided that—

- (a) where a trade or business of any kind is carried on by or on behalf of the Government of a Province in any part of British India outside that Province or by a Ruler in any part of British India, nothing in this subsection shall exempt that Government or Ruler from any Federal taxation in respect of that trade or business, or any operations connected therewith, or any income arising in connection therewith, or any property occupied for the purposes thereof ;
- (b) nothing in this subsection shall exempt a Ruler from any Federal taxation in respect of any lands, buildings or income being his personal property or personal income.

(2) Nothing in this Act affects any exemption from taxation enjoyed as of right at the passing of this Act by the Ruler of an Indian State in respect of any Indian Government securities issued before that date.

**156.** Where under the provisions of this Act the expenses of any court or commission, or the pension payable to or in respect of a person who has served under the Crown in India, are charged on the revenues of the Federation or the revenues of a Province, then if—

Adjustment  
in respect of  
certain  
expenses and  
pensions.

- (a) in the case of a charge on the revenues of the Federation, the court or commission serves any of the separate needs of a Province, or the person has served wholly or in part in connection with the affairs of a Province ; or
- (b) in the case of a charge on the revenues of a Province, the court or commission serves any of the separate needs of the Federation or another Province, or the person has served wholly or in part in connection with the affairs of the Federation or another Province,

there shall be charged on and paid out of the revenues of the Province or, as the case may be, the revenues of the Federation or of the other Province, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.



Duty of  
Federation  
and Pro-  
vinces to  
supply  
Secretary of  
State with  
funds.

**157.** (1) The Federation and every Province shall secure that there are from time to time in the hands of the Secretary of State sufficient moneys to enable him to make such payments as he may have to make in respect of any liability which falls to be met out of the revenues of the Federation or of the Province as the case may be.

(2) Without prejudice to their obligations under the preceding subsection, the Federation and every Province shall secure that there are from time to time in the hands of the Secretary of State and the High Commissioner sufficient moneys to enable payment to be made of all pensions payable out of the revenues of the Federation or the Province, as the case may be, in the United Kingdom or through officers accounting to the Secretary of State or to the High Commissioner.

Provisions  
as to rela-  
tion of  
Burma  
monetary  
system with  
India.

**158.** (1) His Majesty in Council may make such provision as may appear to him to be necessary or proper for defining and regulating the relations between the monetary systems of India and Burma and for purposes connected with or ancillary to those purposes, and in particular, but without prejudice to the generality of this section, such provision as may appear to His Majesty to be necessary or proper for the purpose of giving effect to any arrangements with respect to the said matters made before the commencement of Part III of this Act with the approval of the Secretary of State by the Governor of Burma in Council with the Governor-General in Council or any other persons.

(2) Any sums required by an Order under this section to be paid by the Federation shall be charged on the revenues of the Federation.

Relief in  
respect of  
tax on  
income  
taxable both  
in India and  
Burma.

**159.** His Majesty in Council may make provision for the grant of relief from any Federal tax on income in respect of income taxed or taxable in Burma.

Provisions  
as to  
customs  
duties on  
India-  
Burma trade.

**160.** With a view to preventing undue disturbance of trade between India and Burma in the period immediately following the separation of India and Burma and with a view to safeguarding the economic interests of Burma during that period, His Majesty may by Order in Council give such directions as he thinks fit for those purposes with respect to the duties which are, while the Order is in force, to be levied on goods imported into or exported from India or Burma and with respect to ancillary and related matters.

## CHAPTER II.

### BORROWING AND AUDIT.

#### *Borrowing.*

Cessation of  
borrowing  
by Secretary

**161.** Upon the commencement of Part III of this Act all powers vested in the Secretary of State in Council of borrowing on the security of the revenues

of India shall cease and determine, but nothing in this section affects the provisions of Part XIII of this Act with respect to borrowing in sterling by the Secretary of State.

**162.** Subject to the provisions of Part XIII of this Act with respect to borrowing in sterling, the executive authority of the Federation extends to borrowing upon the security of the revenues of the Federation within such limits, if any, as may from time to time be fixed by Act of the Federal Legislature and to the giving of guarantees within such limits, if any, as may be so fixed.

**163.** (1) Subject to the provisions of this section, the executive authority of a Province extends to borrowing upon the security of the revenues of the Province within such limits, if any, as may from time to time be fixed by the Act of the Provincial Legislature and to the giving of guarantees within such limits, if any, as may be so fixed.

(2) The Federation may, subject to such conditions, if any, as it may think fit to impose, make loans to, or, so long as any limits fixed under the last preceding section are not exceeded, give guarantees in respect of loans raised by, any Province and any sums required for the purpose of making loans to a Province shall be charged on the revenues of the Federation.

(3) A Province may not without the consent of the Federation borrow outside India, nor without the like consent raise any loan if there is still outstanding any part of a loan made to the Province by the Federation or by the Governor-General in Council, or in respect of which a guarantee has been given by the Federation or by the Governor-General in Council.

A consent under this subsection may be granted subject to such conditions, if any, as the Federation may think fit to impose.

(4) A consent required by the last preceding subsection shall not be unreasonably withheld, nor shall the Federation refuse, if sufficient cause is shown, to make a loan to, or to give a guarantee in respect of a loan raised by, a Province, or seek to impose in respect of any of the matters aforesaid any condition which is unreasonable, and, if any dispute arises whether a refusal of consent, or a refusal to make a loan or to give a guarantee, or any condition insisted upon, is or is not justifiable, the matter shall be referred to the Governor-General and the decision of the Governor-General in his discretion shall be final.

**164.** The Federation may, subject to such conditions, if any, as it may think fit to impose, make loans to, or, so long as any limits fixed under the last but one preceding section are not exceeded, give guarantees in respect of loans raised by, any Federated State.

**165.** (1) The Colonial Stock Acts, 1877 to 1900, shall, notwithstanding anything to the contrary in those Acts, apply in relation to sterling stock issued after the establishment of the Federation and forming part of the public debt of the Federation as they apply in relation to stock forming part of the public debt of any British Possession mentioned in those Acts, so however that

nothing in section twenty of the Colonial Stock Act, 1877, shall be construed as compelling a person desirous of bringing proceedings to proceed in the manner therein specified and that, until Parliament otherwise determines, any conditions prescribed by the Treasury under section two of the Colonial Stock Act, 1900, shall be deemed to have been complied with with respect to all such stock so issued by the Federation. 40 & 41 Vict., c. 59.  
63 & 64 Vict., c. 62.

(2) The expression "colonial stock" in section eleven of the Trusts (Scotland) Act, 1921, shall include any stock in relation to which the said Acts apply by virtue of this section. 11 & 12 Geo. 5, c. 58.

(3) In paragraph (d) of subsection (1) of section one of the Trustee Act, 1925, the words "or any other securities the interest in sterling whereon is payable out of, and charged on, the revenues of India" shall be repealed: 15 & 16 Geo. 5, c. 19.

Provided that, notwithstanding anything in this Act, any securities which by virtue of the said words were immediately before the commencement of Part III of this Act securities in which a trustee might invest trust funds shall continue to be securities in which a trustee may invest such funds.

#### *Audit and Accounts.*

**Auditor-General of India.**

**166.** (1) There shall be an Auditor-General of India, who shall be appointed by His Majesty and shall only be removed from office in like manner and on the like grounds as a judge of the Federal Court.

(2) The conditions of service of the Auditor-General shall be such as may be prescribed by His Majesty in Council, and he shall not be eligible for further office under the Crown in India after he has ceased to hold his office :

Provided that neither the salary of an Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(3) The Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Federation and of the Provinces as may be prescribed by, or by rules made under, an Order of His Majesty in Council, or by any subsequent Act of the Federal Legislature varying or extending such an Order :

Provided that no Bill or amendment for the purpose aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion.

(4) The salary, allowances and pension payable to or in respect of an Auditor-General shall be charged on the revenues of the Federation, and the salaries, allowances and pensions payable to or in respect of members of his staff shall be paid out of those revenues.

**Provincial Auditor-General.**

**167.** (1) If a Provincial Legislature after the expiration of two years from the commencement of Part III of this Act passes an Act charging the salary of an Auditor-General for that Province on the revenues of the Province, an Auditor-General of the Province may be appointed by His Majesty to perform

the same duties and to exercise the same powers in relation to the audit of the accounts of the Province as would be performed and exercised by the Auditor-General of India, if an Auditor-General of the Province had not been appointed :

Provided that no appointment of an Auditor-General in a Province shall be made until the expiration of at least three years from the date of the Act of the Provincial Legislature by which provision is made for an Auditor-General of that Province.

(2) The provisions of the last preceding section shall apply in relation to the Auditor-General of a Province and his staff as they apply in relation to the Auditor-General of India and his staff, subject to the following modifications, that is to say—

- (a) a person who is, or has been, Auditor-General of a Province shall be eligible for appointment as Auditor-General of India ;
- (b) in subsection (3) of the said section, for the reference to the Federal Legislature there shall be substituted a reference to the Provincial Legislature, and for the reference to the Governor-General there shall be substituted a reference to the Governor ; and
- (c) in subsection (4) of the said section for the reference to the revenues of the Federation there shall be substituted a reference to the revenues of the Province :

Provided that nothing in this section shall derogate from the power of the Auditor-General of India to give such directions in respect to the accounts of Provinces as are mentioned in the next succeeding section.

**168.** The accounts of the Federation shall be kept in such form as the Auditor-General of India may, with the approval of the Governor-General, prescribe and, in so far as the Auditor-General of India may, with the like approval, give any directions with regard to the methods or principles in accordance with which any accounts of Provinces ought to be kept, it shall be the duty of every Provincial Government to cause accounts to be kept accordingly.

**169.** The reports of the Auditor-General of India relating to the accounts of the Federation shall be submitted to the Governor-General, who shall cause them to be laid before the Federal Legislature, and the reports of the Auditor-General of India or of the Auditor-General of the Province, as the case may be relating to the accounts of a Province shall be submitted to the Governor of the Province, who shall cause them to be laid before the Provincial Legislature.

**170.** (1) There shall be an Auditor of Indian Home Accounts who shall be appointed by the Governor-General in his discretion and shall only be removed from office in like manner and on the like grounds as a judge of the Federal Court.

(2) The conditions of service of the Auditor of Indian Home Accounts shall be such as may be prescribed by the Governor-General in his discretion :

Provided that neither the salary of an Auditor of Indian Home Accounts nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(3) The Auditor of Indian Home Accounts shall perform such duties and exercise such powers in relation to transactions in the United Kingdom affecting the revenues of the Federation, of the Federal Railway Authority, or of any Province, as may be prescribed by, or by rules made under, an Order of His Majesty in Council, or by any Act of the Federal Legislature varying or extending such an Order :

Provided that no Bill or amendment for the purpose aforesaid shall be introduced or moved without the prior sanction of the Governor-General in his discretion.

(4) The reports of the Auditor of Indian Home Accounts relating to such transactions as aforesaid shall be submitted to the Auditor-General of India, or, in the case of transactions affecting the revenues of a Province which has an Auditor-General, to the Auditor-General of the Province, and shall be included by any such Auditor-General in the reports which under this Part of this Act he is required to submit to the Governor-General or, as the case may be to the Governor.

(5) The Auditor of Indian Home Accounts shall be subject to the general superintendence of the Auditor-General of India.

(6) The salary, allowances and pension payable to or in respect of the Auditor of Indian Home Accounts shall be charged on the revenues of the Federation, and the salaries, allowances and pensions payable to or in respect of members of his staff shall be paid out of those revenues.

(7) His Majesty in Council may require the Auditor of Indian Home Accounts to perform in relation to Burma all or any of the functions which he performs in relation to India, and may fix the payments to be made in respect of his services from the revenues of Burma to the revenues of the Federation, and may make such incidental and consequential provision as may appear to him to be proper.

**Audit of accounts relating to the discharge of the functions of the Crown in relation to Indian States.**

**171.** The accounts relating to the discharge of the functions of the Crown in its relations with Indian States shall be audited by the Auditor-General of India, or, in so far as those accounts concern transactions in the United Kingdom, by the Auditor of Indian Home Accounts acting on his behalf and under his general superintendence, and the Auditor-General of India shall make to the Secretary of State annual reports on the accounts so audited by him or on his behalf.

## CHAPTER III.

## PROPERTY, CONTRACTS, LIABILITIES, AND SUITS.

**172.** (1) All lands and buildings which immediately before the commencement of Part III of this Act were vested in His Majesty for the purposes of the Government of India shall as from that date—

Vesting of  
lands and  
buildings.

- (a) in the case of lands and buildings which are situate in a Province, vest in His Majesty for the purposes of the Government of that Province unless they were then used, otherwise than under a tenancy agreement between the Governor-General in Council and the Government of that Province, for purposes which thereafter will be purposes of the Federal Government or of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, or unless they are lands and buildings formerly used for such purposes as aforesaid, or intended or formerly intended to be so used, and are certified by the Governor-General in Council or, as the case may be, His Majesty's Representative, to have been retained for future use for such purposes, or to have been retained temporarily for the purpose of more advantageous disposal by sale or otherwise ;
- (b) in the case of lands and buildings which are situate in a Province but do not by virtue of the preceding paragraph vest in His Majesty for the purposes of the Government of that Province, and in the case of lands and buildings which are situate in India elsewhere than in a Province, vest in His Majesty for the purposes of the Government of the Federation or for the purposes of the exercise of the functions of the Crown in its relations with Indian States, according to the purpose for which they were used immediately before the commencement of Part III of this Act ; and
- (c) in the case of lands and buildings which are situate elsewhere than in India (except lands and buildings situate in Burma or Aden), vest in His Majesty for the purposes of the Government of the Federation or, if they were immediately before the commencement of Part III of this Act used for purposes of the department of the Secretary of State in Council, for the purposes of His Majesty's Government in the United Kingdom.

(2) Except with the consent of the Governor-General, effect shall not be given to any proposal for the sale of any lands or buildings which by virtue of this section are vested in His Majesty for the purposes of His Majesty's Government in the United Kingdom, or to any proposal for the diversion of any such lands and buildings to uses not connected with the discharge of the functions of the Crown in relation to India or Burma.

(3) The lands and buildings vested in His Majesty by virtue of this section for the purpose of His Majesty's Government in the United Kingdom shall

be under the management of the Commissioners of Works, and subject to the provisions of subsection (2) of this section, the provisions of the Acts relating to the Commissioners of Works shall apply in relation to those lands and buildings as if they had been acquired by the Commissioners in pursuance of those Acts.

(4) The provisions of this section shall apply in relation to the contents of buildings vested in His Majesty for the purposes of His Majesty's Government in the United Kingdom, other than any money or securities, as they apply in relation to the buildings themselves :

Provided that, in the case of such articles and classes of articles as may be agreed upon between the Secretary of State and the Governor-General, the provisions of subsection (2) of this section shall not apply and, notwithstanding anything in subsection (3) of this section, the contents of those buildings shall be under the control of the Secretary of State.

(5) Any question which may arise within the five years next following the commencement of Part III of this Act as to the purposes for which any lands or buildings are by virtue of this section vested in His Majesty may be determined by His Majesty in Council.

Provisions  
as to other  
property.

**173.** (1) Subject to the provisions of this and the last preceding section, all property vested in His Majesty which by virtue of any delegation from the Secretary of State in Council or otherwise is immediately before the commencement of Part III of this Act in the possession or under the control of, or held on account of, the Governor-General in Council or any Local Government shall, as from the commencement of Part III of this Act, vest in His Majesty—

- (a) for the purposes of the Government of the Federation ; or
- (b) for the purposes of the exercise of the functions of the Crown in its relations with Indian States ; or
- (c) for the purposes of the Government of a Province,

according as the purposes for which the property was held immediately before the commencement of Part III of this Act will thereafter be purposes of the Government of the Federation, purposes of His Majesty's Representative for the exercise of the said functions of the Crown or purposes of the Government of a Province :

Provided that—

- (i) all moneys which immediately before the commencement of Part III of this Act were in the public account of which the Governor-General in Council was custodian shall be vested in His Majesty for the purposes of the Government of the Federation ;
- (ii) all credits and debits of the Local Government of any Governor's Province (other than Burma) in account with the Governor-General in Council shall be deemed to be credits and debits of the corresponding Province under this Act in account with the Federation.

(2) Subject as aforesaid, all other property vested in His Majesty and under the control of the Secretary of State in Council immediately before the commencement of Part III of this Act shall as from the commencement of Part III of this Act vest in His Majesty for the purposes of the Government of the Federation, for the purposes of the exercise of the functions of the Crown in its relations with Indian States or for the purposes of the Government of a Province, according as the Secretary of State may determine having regard to the circumstances of the case, and the Secretary of State shall have power to and shall deal with the property accordingly.

(3) In this section "property" includes money, securities, bank balances and movable property of any description.

(4) Arrears of any taxes outstanding immediately before the commencement of Part III of this Act shall be deemed to be due to and may be recovered by the Federal Government or a Provincial Government according as the proceeds of any such tax imposed after the commencement of Part III of this Act would be due to and recoverable by the Federal Government or the Provincial Government.

(5) This section shall apply in relation to any equipment, stores, moneys, bank balances and other property held in connection with His Majesty's Indian forces stationed in Burma (not being forces raised in Burma) as it applies in relation to property held for purposes which will be purposes of the Government of the Federation, but, save as aforesaid, nothing in this section applies to any property situate in Burma or Aden, or to arrears of taxes in Burma or Aden, or to any property which by virtue of any delegation from the Secretary of State in Council or otherwise is, immediately before the commencement of Part III of this Act, in the possession or under the control of, or held on account of, the Local Government of Burma or Aden.

(6) Nothing in this section shall affect any adjustments made or to be made by or under this Act by reason of the creation before the commencement of Part III of this Act of the Provinces of Orissa and Sind.

**174.** Subject as hereinafter provided, any property in India accruing to His Majesty by escheat or lapse, or as bona vacantia for want of a rightful owner, shall, if it is property situate in a Province, vest in His Majesty for the purposes of the government of that Province, and shall in any other case vest in His Majesty for the purposes of the government of the Federation : Property accruing by escheat or lapse, or as bona vacantia.

Provided that any property which at the date when it accrued to His Majesty was in the possession or under the control of the Federal Government or the Government of a Province shall, according as the purposes for which it was then used or held were purposes of the Federation or of a Province, vest in His Majesty for the purposes of the government of the Federation or for the purposes of the government of that Province.

**175.** (1) The executive authority of the Federation and of a Province shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property vested in His Majesty for the Power to acquire property and to



make  
contracts,  
&c.

purposes of the government of the Federation or of the Province, as the case may be, and to the purchase or acquisition of property on behalf of His Majesty for those purposes respectively, and to the making of contracts :

Provided that any land or building used as an official residence of the Governor-General or a Governor shall not be sold, nor any change made in the purposes for which it is being used, except with the concurrence, in his discretion, of the Governor-General or the Governor, as the case may be.

(2) All property acquired for the purposes of the Federation or of a Province or of the exercise of the functions of the Crown in its relations with Indian States, as the case may be, shall vest in His Majesty for those purposes.

(3) Subject to the provisions of this Act with respect to the Federal Railway Authority, all contracts made in the exercise of the executive authority of the Federation or of a Province shall be expressed to be made by the Governor-General, or by the Governor of the Province, as the case may be, and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the Governor-General or Governor by such persons and in such manner as he may direct or authorise.

(4) Neither the Governor-General, nor the Governor of a Province, nor the Secretary of State shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Act, or for the purposes of the Government of India Act or of any Act repealed thereby, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

Suits and  
proceedings.

**176.** (1) The Federation may sue or be sued by the name of the Federation of India and a Provincial Government may sue or be sued by the name of the Province, and, without prejudice to the subsequent provisions of this chapter, may, subject to any provisions which may be made by Act of the Federal or a Provincial Legislature enacted by virtue of powers conferred on that Legislature by this Act, sue or be sued in relation to their respective affairs in the like cases as the Secretary of State in Council might have sued or been sued if this Act had not been passed.

(2) Rules of court may provide that, where the Federation, the Federal Railway Authority, or a Province sue or are sued in the United Kingdom, service of all proceedings may be effected upon the High Commissioner for India or such other representative in the United Kingdom of the Federation, Authority or Province, as may be specified in the rules.

Existing  
contracts  
of Secretary  
of State in  
Council.

**177.** (1) Without prejudice to the special provisions of the next succeeding section relating to loans, guarantees and other financial obligations, any contract made before the commencement of Part III of this Act by, or on behalf of, the Secretary of State in Council shall, as from that date—

(a) if it was made for purposes which will after the commencement of Part III of this Act be purposes of the Government of a Province, have effect as if it had been made on behalf of that Province ; and

- (b) in any other case have effect as if it had been made on behalf of the Federation.

and references in any such contract to the Secretary of State in Council shall be construed accordingly, and any such contract may be enforced in accordance with the provisions of the next but one succeeding section.

(2) This section does not apply in relation to contracts solely in connection with the affairs of Burma or Aden, or solely for purposes which will after the commencement of Part III of this Act be purposes of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States.

**178.** (1) All liabilities in respect of such loans, guarantees and other financial obligations of the Secretary of State in Council as are outstanding immediately before the commencement of Part III of this Act and were secured on the revenues of India shall, as from that date, be liabilities of the Federation and shall be secured upon the revenues of the Federation and of all the Provinces.

Special provisions as to existing loans, guarantees and other financial obligations.

(2) All enactments relating to any such loans, guarantees and other financial obligations of the Secretary of State in Council as aforesaid shall, in relation to those loans, guarantees and obligations, continue to have effect with the substitution therein, except in so far as the context otherwise requires, of references to the Secretary of State for references to the Secretary of State in Council, and with such other modifications and such adaptations as His Majesty in Council may deem necessary.

(3) No deduction in respect of taxation imposed by or under any existing Indian law or any law of the Federal or a Provincial Legislature shall be made from any payment of principal or interest in respect of any securities, the interest whereon is payable in sterling, being a payment which would, but for the provisions of this Act, have fallen to be made by the Secretary of State in Council.

(4) If in the case of any Local Government in India there are outstanding immediately before the commencement of Part III of this Act any loans or other financial obligations secured upon the revenues of the Province, all liabilities in respect of those loans and obligations shall, as from that date, be liabilities of the Government of, and shall be secured upon the revenues of, the corresponding Province under this Act.

(5) Any liabilities in respect of any such loan, guarantee or financial obligation as is mentioned in this section may be enforced in accordance with the provisions of the next succeeding section.

(6) The provisions of this section apply to the liabilities of the Secretary of State in Council in respect of the Burma Railways three per cent. Debenture Stock, but, save as aforesaid, do not apply to any liability solely in connection with the affairs of Burma or Aden.

**179.** (1) Any proceedings which, if this Act had not been passed, might have been brought against the Secretary of State in Council may, in the case of any liability arising before the commencement of Part III of this Act or

Legal proceedings as to certain matters.

arising under any contract or statute made or passed before that date, be brought against the Federation or a Province, according to the subject matter of the proceedings, or, at the option of the person by whom the proceedings are brought, against the Secretary of State, and any sum ordered to be paid by way of debt, damages or costs in any such proceedings, and any costs or expenses incurred in or in connection with the defence thereof, shall be paid out of the revenues of the Federation or the Province, as the case may be, or, if the proceedings are brought against the Secretary of State, out of such revenues as the Secretary of State may direct.

The provisions of this subsection shall apply with respect to proceedings arising under any contract declared by the terms thereof to be supplemental to any such contract as is mentioned in those provisions as they apply in relation to the contracts so mentioned.

(2) If at the commencement of Part III of this Act any legal proceedings are pending in the United Kingdom or in India to which the Secretary of State in Council is a party, the Secretary of State shall be deemed to be substituted in those proceedings for the Secretary of State in Council, and the provisions of subsection (1) of this section shall apply in relation to sums ordered to be paid, and costs or expenses incurred, by the Secretary of State or the Secretary of State in Council in or in connection with any such proceedings as they apply in relation to sums ordered to be paid in, and costs or expenses incurred in or in connection with the defence of, proceedings brought against the Secretary of State under the said subsection (1).

(3) Any contract made in respect of the affairs of the Federation or a Province by or on behalf of the Secretary of State after the commencement of Part III of this Act may provide that any proceedings under that contract shall be brought in the United Kingdom by or against the Secretary of State and any such proceedings may be brought accordingly, and any sum ordered to be paid by the Secretary of State by way of debt, damages or costs in any such proceedings, and any costs or expenses incurred by the Secretary of State in or in connection therewith, shall be paid out of the revenues of the Federation or the Province, as the case may be.

(4) Nothing in this section shall be construed as imposing any liability upon the exchequer of the United Kingdom in respect of any debt, damages, costs or expenses in or in connection with any proceedings brought or continued by or against the Secretary of State by virtue of this section, or as derogating from the provisions of subsection (1) of the last preceding section.

(5) This section does not apply in relation to contracts or liabilities solely in connection with the affairs of Burma or Aden, other than liabilities which are by this Act made liabilities of the Federation, or to contracts or liabilities for purposes which will, after the commencement of Part III of this Act, be purposes of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States.

**180.** (1) Any contract made before the commencement of Part III of this Act by or on behalf of the Secretary of State in Council solely in connection with the exercise of the functions of the Crown in its relations with Indian States shall, as from the commencement of Part III of this Act, have effect as if it had been made on behalf of His Majesty and references in any such contract to the Secretary of State in Council shall be construed accordingly.

Contracts in connection with functions of Crown in its relations with Indian States.

(2) Any proceedings which if this Act had not been passed might have been brought by or against the Secretary of State in Council in respect of any such contract as aforesaid may be brought by or against the Secretary of State and if at the commencement of Part III of this Act any proceedings in respect of any such contract are pending in the United Kingdom or in India to which the Secretary of State in Council is a party, the Secretary of State shall be deemed to be substituted in those proceedings for the Secretary of State in Council.

(3) Any contract made after the commencement of Part III of this Act on behalf of His Majesty solely in connection with the exercise of the said functions of the Crown shall, if it is such a contract as would have been legally enforceable by or against the Secretary of State in Council, be legally enforceable by or against the Secretary of State.

(4) Any sums ordered to be paid by the Secretary of State by way of debt, damages or costs in any such proceedings as are mentioned in this section and any costs or expenses incurred by him in or in connection with the prosecution or defence thereof shall be deemed to be sums required for the discharge of the functions of the Crown in its relations with Indian States, and any sum received by the Secretary of State by virtue of any such proceedings shall be paid or credited to the Federation.

## PART VIII.

### THE FEDERAL RAILWAY AUTHORITY.

**181.** (1) The executive authority of the Federation in respect of the regulation and the construction, maintenance and operation of railways shall be exercised by a Federal Railway Authority (hereinafter referred to as "the Authority").

Executive authority in respect of railways to be exercised by Federal Railway Authority.

(2)<sup>1</sup> The said executive authority extends to the carrying on in connection with any Federal railways of such undertakings as, in the opinion of the Authority, it is expedient should be carried on in connection therewith and to the making and carrying into effect of arrangements with other persons for the carrying on by those persons of such undertakings :

Provided that, as respects their powers under this subsection, the Authority shall be subject to any relevant provisions of any Federal, Provincial

<sup>1</sup> This sub-section came into force on the 1st April, 1937, with certain modifications, see para. 7 of the India and Burma (Transitory Provisions) Order, 1937.

or existing Indian law, and to the relevant provisions of the law of any Federated State, but nothing in this subsection shall be construed as limiting the provisions of Part VI of this Act regulating the relations of the Federation with Provinces and States.

(3) Notwithstanding anything in this section, the Federal Government or its officers shall perform in regard to the construction, equipment, and operation of railways such functions for securing the safety both of members of the public and of persons operating the railways, including the holding of inquiries into the causes of accidents, as in the opinion of the Federal Government should be performed by persons independent of the Authority and of any railway administration.

So much of Part X of this Act as provides that powers in relation to railway services of the Federation shall be exercised by the Authority shall not apply in relation to officers of the Federal Government employed in the performance of any of the functions mentioned in this subsection.

Composition,  
&c. of  
Railway  
Authority.

**182.** (1) Not less than three-sevenths of the members of the Authority shall be persons appointed by the Governor-General in his discretion and the Governor-General shall in his discretion appoint a member of the Authority to be the President thereof.

(2) Subject as aforesaid, the provisions of the Eighth Schedule to this Act, as supplemented or amended by any Act of the Federal Legislature for the time being in force, shall have effect with respect to the appointment, qualifications and conditions of service of members of the Authority and with respect to the Authority's proceedings, executive staff and liability to income-tax :

Provided that, except with the previous sanction of the Governor-General in his discretion, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature any Bill or any amendment for supplementing or amending the provisions of the said Schedule.

Directions  
and  
principles to  
be observed  
by Railway  
Authority.

**183.** (1) The Authority in discharging their functions under this Act shall act on business principles, due regard being had by them to the interests of agriculture, industry, commerce and the general public, and in particular shall make proper provision for meeting out of their receipts on revenue account all expenditure to which such receipts are applicable under the provisions of this Part of this Act.

(2) In the discharge of their said functions the Authority shall be guided by such instructions on questions of policy as may be given to them by the Federal Government.

If any dispute arises under this subsection between the Federal Government and the Authority as to whether a question is or is not a question of policy the decision of the Governor-General in his discretion shall be final.

(3) The provisions of subsection (1) of this section shall apply in relation to the discharge by the Federal Government of their functions with respect

to railways as they apply in relation to the functions of the Authority, but nothing in this subsection shall be construed as limiting the powers of the Governor-General under the next succeeding subsection.

(4) The provisions of this Act relating to the special responsibilities of the Governor-General, and to his duty as regards certain matters to exercise his functions in his discretion or to exercise his individual judgment, shall apply as regards matters entrusted to the Authority as if the executive authority of the Federation in regard to those matters were vested in him, and as if the functions of the Authority as regards those matters were the functions of ministers, and the Governor-General may issue to the Authority such directions as he may deem necessary as regards any matter which appears to him to involve any of his special responsibilities, or as regards which he is by or under this Act required to act in his discretion or to exercise his individual judgment, and the Authority shall give effect to any directions so issued to them.

**184.** (1) The Governor-General exercising his individual judgment, but after consultation with the Authority, may make rules for the more convenient transaction of business arising out of the relations between the Federal Government and the Authority.

Conduct of  
business  
between  
Railway  
Authority  
and  
Federal  
Govern-  
ment.

(2) The rules shall include provisions requiring the Authority to transmit to the Federal Government all such information with respect to their business as may be specified in the rules, or as the Governor-General may otherwise require to be so transmitted, and in particular provisions requiring the Authority and their chief executive officer to bring to the notice of the Governor-General any matter under consideration by the Authority or by that officer which involves, or appears to them or him likely to involve, any special responsibility of the Governor-General.

**185.** (1) Except in such classes of case as may be specified in regulations to be made by the Federal Government, the Authority shall not acquire or dispose of any land, and, when it is necessary for the Authority to acquire compulsorily any land for the purposes of their functions, the Federal Government shall cause that land to be acquired on their behalf and at their expense.

Acquisition  
and sale of  
land, con-  
tracts and  
working  
agreements.

(2) Contracts made by or on behalf of the Authority shall be enforceable by or against the Authority and not by or against the Federation, and, subject to any provision which may hereafter be made by Act of the Federal Legislature, the Authority may sue and be sued in the like manner and in the like cases as a company operating a railway may sue and be sued :

Provided that this subsection does not apply in relation to any contract declared by its terms to be supplemental to a contract made before the establishment of the Authority, and any such supplemental contract may be enforced in any manner in which the principal contract may be enforced

(3) The Authority may make working agreements with, and carry out working agreements made with any Indian State or person owning or operating any railway in India, or in territories adjacent to India, with respect to the

persons by whom and the terms on which any of the railways with which the parties are respectively concerned shall be operated.

Finance of  
the Railway  
Authority.

**186.** (1) The Authority shall establish, maintain and control a fund (which shall be known as the "Railway Fund") and all moneys received by the Authority, whether on revenue account or on capital account in the discharge of their functions and all moneys provided, whether on revenue account or on capital account, out of the revenues of the Federation to enable them to discharge those functions shall be paid into that Fund, and all expenditure, whether on revenue account or on capital account, required for the discharge of their functions shall be defrayed out of that Fund :

Provided that nothing in this subsection shall prevent the Authority from establishing and maintaining separate provident funds for the benefit of persons who are or have been employed in connection with railways.

(2) The receipts of the Authority on revenue account in any financial year shall be applied in—

- (a) defraying working expenses ;
- (b) meeting payments due under contracts or agreements to railway undertakings ;
- (c) paying pensions, and contributions to provident funds ;
- (d) repaying to the revenues of the Federation so much of any pensions and contributions to provident funds charged by this Act on those revenues as is attributable to service on railways in India ;
- (e) making due provision for maintenance, renewals, improvements and depreciation ;
- (f) making to the revenues of the Federation any payments by way of interest which they are required by this Part of this Act to make ; and
- (g) defraying other expenses properly chargeable against revenue in that year.

(3) Any surpluses on revenue account shown in the accounts of the Authority shall be apportioned between the Federation and the Authority in accordance with a scheme to be prepared, and from time to time reviewed, by the Federal Government, or, until such a scheme has been prepared, in accordance with the principles which immediately before the establishment of the Authority regulated the application of surpluses in railway accounts, and any sum apportioned to the Federation under this subsection shall be transferred accordingly and shall form part of the revenues of the Federation.

(4) The Federation may provide any moneys, whether on revenue account or capital account, for the purposes of the Railway Authority, but, where any moneys are so provided, the provision thereof shall be deemed to be expenditure and shall accordingly be shown as such in the estimates of expenditure laid before the Chambers of the Legislature.

**187.** (1) There shall be deemed to be owing from the Authority to the Federation such sum as may be agreed or, in default of agreement, determined by the Governor-General in his discretion, to be equivalent to the amount of the moneys provided, whether before or after the passing of this Act, out of the revenues of India or of the Federation for capital purposes in connection with railways in India (exclusive of Burma) and the Authority shall out of their receipts on revenue account pay to the Federation interest on that amount at such rate as may be so agreed or determined, and also make payments in reduction of the principal of that amount in accordance with a repayment scheme so agreed or determined.

Provisions  
as to certain  
obligations  
of the  
Railway  
Authority.

For the purposes of this subsection, where the Secretary of State in Council has assumed or incurred any obligation in connection with any such railways, he shall be deemed to have provided for the said purposes an amount equal to the capital value of that obligation as shown in the accounts of the Government of India immediately before the establishment of the Authority.

Nothing in this subsection shall be construed as preventing the Authority from making payments to the Federation in reduction of the principal of any such amount as aforesaid out of moneys other than receipts on revenue account.

(2) It shall be an obligation of the Authority to repay to the Federation any sums defrayed out of the revenues of the Federation in respect of any debt, damages, costs, or expenses in, or in connection with, any proceedings brought or continued by or against the Federation or against the Secretary of State under Part VII of this Act in respect of railways in India.

(3) It shall be an obligation of the Authority to pay to any Province or Indian State such sums as may be equivalent to the expenses incurred by that Province or State in the provision of police required for the maintenance of order on Federal railway premises, and any question which may arise between the Authority and a Province or State as to the amount of any expenses so incurred shall be determined by the Governor-General in his discretion.

**188.** Subject to such conditions, if any, as may be prescribed by the Federal Government, the Authority may from time to time invest any moneys in the railway fund or any provident fund which are not for the time being required to meet expenses properly defrayable out of that fund, and may, subject as aforesaid, from time to time transfer and realise investments made by them.

Investment  
of funds of  
Railway  
Authority.

**189.** (1) Nothing in the foregoing provisions of this Part of this Act shall be construed as entitling the Authority to require that any moneys which immediately before the establishment of the Authority were held by the Governor-General in Council on account of any railway depreciation fund, reserve fund or provident fund shall be transferred to the Authority for investment by them, but the Authority may from time to time require the transfer to themselves of so much of any such fund as they require to defray expenditure chargeable against that fund, and the Federal Government shall credit each such fund with interest on the untransferred balance thereof at such rate as may be agreed, or, in default of agreement, determined by the Governor-General in his discretion.

Special  
provisions  
as to certain  
existing  
funds.



(2) In this section references to any such fund as aforesaid shall be construed as references to so much of that fund as is not attributable to the railways of Burma.

Audit and  
annual  
reports.

**190.** (1) The accounts of the receipts and expenditure of the Authority shall be audited and certified by, or on behalf of, the Auditor-General of India.

(2) The Authority shall publish annually a report of their operations during the preceding year and a statement of accounts in a form approved by the Auditor-General.

Railway  
Rates  
Committee.

**191.** The Governor-General may from time to time appoint a Railway Rates Committee to give advice to the Authority in connection with any dispute between persons using, or desiring to use, a railway and the Authority as to rates or traffic facilities which he may require the Authority to refer to the committee.

Bills and  
amendments  
for regulat-  
ing rates  
and fares to  
require  
recommendation  
of  
Governor-  
General.

**192.** A Bill or amendment making provision for regulating the rates or fares to be charged on any railway shall not be introduced or moved in either Chamber of the Federal Legislature except on the recommendation of the Governor-General.

Obligation  
of Railway  
Authority  
and Federated  
States  
to afford  
mutual  
traffic  
facilities  
and to  
avoid unfair  
discrimination,  
etc.

**193.** (1) It shall be the duty of the Authority and every Federated State so to exercise their powers in relation to the railways with which they are respectively concerned as to afford all reasonable facilities for the receiving, forwarding, and delivering of traffic upon and from those railways, including the receiving, forwarding, and delivering of through traffic at through rates, and as to secure that there shall be between one railway system and another no unfair discrimination, by the granting of undue preferences or otherwise, and no unfair or uneconomic competition.

(2) Any complaint by the Authority against a Federated State or by a Federated State against the Authority on the ground that the provisions of the preceding subsection have not been complied with shall be made to and determined by the Railway Tribunal.

Appeal by  
State to  
Railway  
Tribunal  
from certain  
directions of  
Railway  
Authority.

**194.** If the Authority, in the exercise of any executive authority of the Federation in relation to interchange of traffic, or maximum or minimum rates and fares, or station or service terminal charges, give any direction to a Federated State, the State may complain that the direction discriminates unfairly against the railways of the State, or imposes on the State an obligation to afford facilities which are not in the circumstances reasonable, and any such complaint shall be determined by the Railway Tribunal.

Con-  
struction  
and recon-  
struction of  
railways.

**195.** (1) The Governor-General acting in his discretion shall make rules requiring the Authority and any Federated State to give notice in such cases as the rules may prescribe of any proposal for constructing a railway or for altering the alignment or gauge of a railway, and to deposit plans.

(2) The rules so made shall contain provisions enabling objections to be lodged by the Authority or by a Federated State on the ground that the carry-

ing out of the proposal will result in unfair or uneconomic competition with a Federal railway or a State railway, as the case may be, and, if an objection so lodged is not withdrawn within the prescribed time, the Governor-General shall refer to the Railway Tribunal the question whether the proposal ought to be carried into effect, either without modification or with such modification as the Tribunal may approve, and the proposal shall not be proceeded with save in accordance with the decision of the Tribunal.

(3) This section shall not apply in any case where the Governor-General in his discretion certifies that for reasons connected with defence effect should, or should not, be given to a proposal.

**196.** (1) There shall be a Tribunal (in this Act referred to as “the Railway Tribunal”) consisting of a President and two other persons to be selected to act in each case by the Governor-General in his discretion from a panel of eight persons appointed by him in his discretion, being persons with railway, administrative, or business experience. Railway  
Tribunal.

(2) The President shall be such one of the judges of the Federal Court as may be appointed for the purpose by the Governor-General in his discretion after consultation with the Chief Justice of India and shall hold office for such period of not less than five years as may be specified in the appointment, and shall be eligible for re-appointment for a further period of five years or any less period :

Provided that, if the President ceases to be a judge of the Federal Court, he shall thereupon cease to be President of the Tribunal and, if he is for any reason temporarily unable to act, the Governor-General in his discretion may after the like consultation appoint another judge of the Federal Court to act for the time being in his place.

(3) It shall be the duty of the Railway Tribunal to exercise such jurisdiction as is conferred on it by this Act, and for that purpose the Tribunal may make such orders, including interim orders, orders varying or discharging a direction or order of the Authority, orders for the payment of compensation or damages and of costs and orders for the production of documents and the attendance of witnesses, as the circumstances of the case may require, and it shall be the duty of the Authority and of every Federated State and of every other person or authority affected thereby to give effect to any such order.

(4) An appeal shall lie to the Federal Court from any decision of the Railway Tribunal on a question of law, but no appeal shall lie from the decision of the Federal Court on any such appeal.

(5) The Railway Tribunal or the Federal Court, as the case may be, may, on application made for the purpose, if satisfied that in view of an alteration in the circumstances it is proper so to do, vary or revoke any previous order made by it.

(6) The President of the Railway Tribunal may, with the approval of the Governor-General in his discretion, make rules regulating the practice and procedure of the Tribunal and the fees to be taken in proceedings before it.

(7) Subject to the provisions of this section relating to appeals to the Federal Court, no court shall have any jurisdiction with respect to any matter with respect to which the Railway Tribunal has jurisdiction.

(8) There shall be paid out of the revenues of the Federation to the members of the Railway Tribunal other than the President such remuneration as may be determined by the Governor-General in his discretion, and the administrative expenses of the Railway Tribunal, including any such remuneration as aforesaid, shall be charged on the revenues of the Federation, and any fees or other moneys taken by the Tribunal shall form part of those revenues.

The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Railway Tribunal in any estimates of expenditure laid by him before the Chambers of the Federal Legislature.

Rights of  
railway  
companies  
in respect of  
arbitration  
under  
contracts.

**197.** (1) Without prejudice to the general provisions of this Act with respect to rights and liabilities under contracts made by or on behalf of the Secretary of State in Council, the provisions of this section shall have effect with respect to any contract so made with a railway company which immediately before the commencement of Part III of this Act was operating a railway in British India.

(2) If a dispute arises under any such contract between the railway company concerned and either the Authority or the Federal Government, and if the matter in dispute is of such a nature that under the contract the company might require, or, but for some provision of this Act, might have required, it to be submitted to arbitration, the dispute shall be deemed to have arisen between the company and the Secretary of State, and the provisions of the contract relating to the determination of such a dispute shall have effect with the substitution of the Secretary of State for the Secretary of State in Council.

Any award made in an arbitration under the foregoing provisions of this section and any settlement of the dispute agreed to by the Secretary of State with the concurrence of his advisers shall be binding on the Federal Government and the Authority, and any sum which the Secretary of State may become liable or may so agree to pay by way of debt, damage or costs, and any cost or expenses incurred by him in connection with the matter, shall be paid out of the revenues of the Federation and shall be charged on those revenues but shall be a debt due to the Federation from the Authority.

Railways in  
Indian  
States  
which have  
not  
federated.

**198.** If and in so far as His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States may entrust to the Authority the performance of any functions in relation to railways in an Indian State which is not a Federated State, the Authority shall undertake the performance of those functions.

Official  
directors of  
Indian  
railway  
companies.

**199<sup>1</sup>.** Any powers of the Secretary of State in Council with respect to the appointment of directors and deputy directors of Indian railway companies

<sup>1</sup> Section 199 came into force on the 1st April, 1937, subject to textual alterations until the establishment of the Federal Railway Authority, see Government of India (Commencement and Transitory Provisions) (No. 2) Order, 1936, para. 3.

shall be exercised by the Governor-General in his discretion after consultation with the Authority.

## PART IX.

### THE JUDICATURE.

#### CHAPTER I<sup>1</sup>.

#### THE FEDERAL COURT.

200. (1) There shall be a Federal Court consisting of a Chief Justice of India and such number of other judges as His Majesty may deem necessary but unless and until an address has been presented by the Federal Legislature to the Governor-General for submission to His Majesty praying for an increase in the number of judges, the number of puisne judges shall not exceed six. Establishment and constitution of Federal Court.

(2) Every judge of the Federal Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty-five years :

Provided that—

(a) a judge may by resignation under his hand addressed to the Governor-General resign his office ;

(b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.

(3) A person shall not be qualified for appointment as a judge of the Federal Court unless he—

(a) has been for at least five years a judge of a High Court in British India or in a Federated State ; or

(b) is a barrister of England or Northern Ireland of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing ; or

(c) has been for at least ten years a pleader of a High Court in British India or in a Federated State or of two or more such Courts in succession :

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<sup>1</sup> Provisions of Chapter I except ss. 206 and 215 came into force on the 1st October, 1937, subject to proviso as to s. 205, *see* Government of India (Federal Court) Order, 1936, para. 3. Section 215 has since come into force, *see* footnote on p. 136, *infra*.

Provided that—

- (i) a person shall not be qualified for appointment as Chief Justice of India unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader ; and
- (ii) in relation to the Chief Justice of India, for the references in paragraphs (b) and (c) of this subsection to ten years there shall be substituted references to fifteen years.

In computing for the purposes of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which a person has held judicial office after he became a barrister, a member of the Faculty of Advocates or a pleader, as the case may be, shall be included.

(4) Every person appointed to be a judge of the Federal Court shall, before he enters upon his office, make and subscribe before the Governor-General or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act.

Salaries,  
&c., of  
judges.

**201.** The judges of the Federal Court shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council :

Provided that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

Temporary  
appoint-  
ment of  
acting Chief  
Justice.

**202.** If the office of Chief Justice of India becomes vacant, or if the Chief Justice is, by reason of absence or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the Chief Justice has resumed his duties, as the case may be, be performed by such one of the other judges of the court as the Governor-General may in his discretion appoint for the purpose.

Seat of  
Federal  
Court.

**203.** The Federal Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice of India may, with the approval of the Governor-General, from time to time appoint.

Original  
jurisdiction  
of Federal  
Court.

**204.** (1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Federation, any of the Provinces or any of the Federated States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends :

Provided that the said jurisdiction shall not extend to—

- (a) a dispute to which a State is a party, unless the dispute—

- (i) concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or

executive authority vested in the Federation by virtue of the Instrument of Accession of that State ; or

(ii) arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State ; or

(iii) arises under an agreement made after the establishment of the Federation, with the approval of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, between that State and the Federation or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute ;

(b) a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute.

(2) The Federal Court in the exercise of its original jurisdiction shall not pronounce any judgment other than a declaratory judgment.

**205.** (1) An appeal shall lie to the Federal Court from any judgment decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made thereunder, and it shall be the duty of every High Court in British India to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly.

Appellate jurisdiction of Federal Court in appeals from High Courts in British India.

(2) Where such a certificate is given, any party in the case may appeal to the Federal Court on the ground that any such question as aforesaid has been wrongly decided, and on any ground on which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given, and, with the leave of the Federal Court, on any other ground, and no direct appeal shall lie to His Majesty in Council, either with or without special leave.

**206.** (1) The Federal Legislature may by Act provide that in such civil cases as may be specified in the Act an appeal shall lie to the Federal Court from a judgment, decree or final order of a High Court in British India without any such certificate as aforesaid, but no appeal shall lie under any such Act unless—

Power of Federal Legislature to enlarge appellate jurisdiction.

(a) the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than fifty thousand rupees or such other sum not less than fifteen thousand rupees as may be specified by the Act, or the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value ; or

(b) the Federal Court gives special leave to appeal.

(2) If the Federal Legislature makes such provision as is mentioned in the last preceding subsection, consequential provision may also be made by Act of the Federal Legislature for the abolition in whole or in part of direct appeals in civil cases from High Courts in British India to His Majesty in Council, either with or without special leave.

(3) A Bill or amendment for any of the purposes specified in this section shall not be introduced into, or moved in, either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

Appellate jurisdiction of Federal Court in appeals from High Courts in Federated States.

**207.** (1) An appeal shall lie to the Federal Court from a High Court in a Federated State on the ground that a question of law has been wrongly decided, being a question which concerns the interpretation of this Act or of an Order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State, or arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature.

(2) An appeal under this section shall be by way of special case to be stated for the opinion of the Federal Court by the High Court, and the Federal Court may require a case to be so stated, and may return any case so stated in order that further facts may be stated therein.

Appeals to His Majesty in Council.

**208.** An appeal may be brought to His Majesty in Council from a decision of the Federal Court—

(a) from any judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of any State or arises under an agreement made under Part VI of this Act in relation to the administration in any State of a law of the Federal Legislature, without leave; and

(b) in any other case, by leave of the Federal Court or of His Majesty in Council.

Form of judgment on appeal.

**209.** (1) The Federal Court shall, where it allows an appeal, remit the case to the court from which the appeal was brought with a declaration as to the judgment, decree or order which is to be substituted for the judgment, decree or order appealed against, and the court from which the appeal was brought shall give effect to the decision of the Federal Court.

(2) Where the Federal Court upon any appeal makes any order as to the costs of the proceedings in the Federal Court, it shall, as soon as the amount of the costs to be paid is ascertained, transmit its order for the payment of that sum to the court from which the appeal was brought and that court shall give effect to the order.

(3) The Federal Court may, subject to such terms or conditions as it may think fit to impose, order a stay of execution in any case under appeal to the Court, pending the hearing of the appeal, and execution shall be stayed accordingly.

**210.** (1) All authorities, civil and judicial, throughout the Federation, shall act in aid of the Federal Court. Enforce-  
ment of  
decrees and  
orders of  
Federal  
Court and  
orders as to  
discovery,  
&c.

(2) The Federal Court, shall, as respects British India and the Federated States, have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of court, which any High Court in British India has power to make as respects the territory within its jurisdiction, and any such orders, and any orders of the Federal Court as to the costs of and incidental to any proceedings therein, shall be enforceable by all courts and authorities in every part of British India or of any Federated State as if they were orders duly made by the highest court exercising civil or criminal jurisdiction, as the case may be, in that part.

(3) Nothing in this section—

(a) shall apply to any such order with respect to costs as is mentioned in subsection (2) of the last preceding section; or

(b) shall, as regards a Federated State, apply in relation to any jurisdiction exercisable by the Federal Court by reason only of the making by the Federal Legislature of such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the Federal Court.

**211.** Where in any case the Federal Court require a special case to be stated or re-stated by, or remit a case to, or order a stay of execution in a case from, a High Court in a Federated State, or require the aid of the civil or judicial authorities in a Federated State, the Federal Court shall cause letters of request in that behalf to be sent to the Ruler of the State, and the Ruler shall cause such communication to be made to the High Court or to any judicial or civil authority as the circumstances may require. Letters of  
request to  
Federated  
States.

**212.** The law declared by the Federal Court and by any judgment of the Privy Council shall, so far as applicable, be recognised as binding on, and shall be followed by, all courts in British India, and, so far as respects the application and interpretation of this Act or any Order in Council thereunder or any matter with respect to which the Federal Legislature has power to make laws in relation to the State, in any Federated State. Law de-  
clared by  
Federal  
Court and  
Privy  
Council to  
be binding  
on all  
courts.

**213.** (1) If at any time it appears to the Governor-General that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Federal Court upon it, he may in his discretion refer the question to that court for consideration, and the court may, after such hearing as they think fit, report to the Governor-General thereon. Power of  
Governor-  
General to  
consult  
Federal  
Court.

(2) No report shall be made under this section save in accordance with an opinion delivered in open court with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this subsection shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion.



Rules of  
court, &c.

**214.** (1) The Federal Court may from time to time, with the approval of the Governor-General in his discretion, make rules of court for regulating generally the practice and procedure of the court, including rules as to the persons practising before the court, as to the time within which appeals to the court are to be entered, as to the costs of and incidental to any proceedings in the court, and as to the fees to be charged in respect of proceedings therein, and in particular may make rules providing for the summary determination of any appeal which appears to the court to be frivolous or vexatious or brought for the purpose of delay.

(2) Rules made under this section may fix the minimum number of judges who are to sit for any purpose, so however, that no case shall be decided by less than three judges :

Provided that, if the Federal Legislature makes such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the court, the rules shall provide for the constitution of a special division of the court for the purpose of deciding all cases which would have been within the jurisdiction of the court even if its jurisdiction had not been so enlarged.

(3) Subject to the provisions of any rules of court, the Chief Justice of India shall determine what judges are to constitute any division of the court and what judges are to sit for any purpose.

(4) No judgment shall be delivered by the Federal Court save in open court and with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this subsection shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment.

(5) All proceedings in the Federal Court shall be in the English language.

Ancillary  
powers of  
Federal  
Court.

**215<sup>1</sup>.** The Federal Legislature may make provision by Act for conferring upon the Federal Court such supplemental powers not inconsistent with any of the provisions of this Act as may appear to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by or under this Act.

Expenses  
of Federal  
Court.

**216.** (1) The administrative expenses of the Federal Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of the Federation, and any fees or other moneys taken by the court shall form part of those revenues.

(2) The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the Chambers of the Federal Legislature.

Construc-  
tion of  
references

**217.** References in any provision of this Part of this Act to a High Court in a Federated State shall be construed as references to any court which His

<sup>1</sup> This section came into force on the 29th July, 1937, see Government of India (Federal Court) Order, 1937, para 3.

Majesty may, after communication with the Ruler of the State, declare to be a High Court for the purposes of that provision.

**218.** Nothing in this chapter shall be construed as conferring, or empowering the Federal Legislature to confer, any right of appeal to the Federal Court in any case in which a High Court in British India is exercising jurisdiction on appeal from a court outside British India, or as affecting any right of appeal in any such case to His Majesty in Council with or without leave.

to High  
Courts in  
States.

Savings.

## CHAPTER II.

### THE HIGH COURTS IN BRITISH INDIA.

**219.** (1) The following courts shall in relation to British India be deemed to be High Courts for the purposes of this Act, that is to say, the High Courts in Calcutta, Madras, Bombay, Allahabad, Lahore, and Patna, the Chief Court in Oudh, the Judicial Commissioner's Courts in the Central Provinces and Berar, in the North-West Frontier Province and in Sind, any other court in British India constituted or reconstituted under this chapter as a High Court, and any other comparable court in British India which His Majesty in Council may declare to be a High Court for the purposes of this Act :

Meaning of  
"High  
Court."

Provided that, if provision has been made before the commencement of Part III of this Act for the establishment of a High Court to replace any court or courts mentioned in this subsection, then as from the establishment of the new court this section shall have effect as if the new court were mentioned therein in lieu of the court or courts so replaced.

(2) The provisions of this chapter shall apply to every High Court in British India.

**220.** (1) Every High Court shall be a court of record and shall consist of a chief justice and such other judges as His Majesty may from time to time deem it necessary to appoint :

Constitu-  
tion of  
High  
Courts.

Provided that the judges so appointed together with any additional judges appointed by the Governor-General in accordance with the following provisions of this chapter shall at no time exceed in number such maximum number as His Majesty in Council may fix in relation to that court.

(2) Every judge of a High Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty years :

Provided that—

(a) a judge may by resignation under his hand addressed to the Governor resign his office ;

(b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour

<sup>1</sup> This Chapter came into force on the 1st April, 1937, see the Government of India (Commencement and Transitory Provisions) Order, 1936, para. 3.

or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.

(3) A person shall not be qualified for appointment as a judge of a High Court unless he—

- (a) is a barrister of England or Northern Ireland, of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing ; or
- (b) is a member of the Indian Civil Service of at least ten years standing, who has for at least three years served as, or exercised the powers of, a district judge ; or
- (c) has for at least five years held a judicial office in British India not inferior to that of a subordinate judge, or judge of a small cause court ; or
- (d) has for at least ten years been a pleader of any High Court, or of two or more such Courts in succession :

Provided that a person shall not, unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader, be qualified for appointment as Chief Justice of any High Court constituted by letters patent until he has served for not less than three years as a judge of a High Court.

In computing for the purposes of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which the person has held judicial office after he became a barrister, a member of the Faculty of Advocates, or a pleader, as the case may be, shall be included.

(4) Every person appointed to be a judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act.

Salaries,  
&c., of  
judges.

**221.** The judges of the several High Courts shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council :

Provided that neither the salary of a judge, nor his rights in respect of leave of absence or pension, shall be varied to his disadvantage after his appointment.

Temporary  
and addi-  
tional  
judges.

**222.** (1) If the office of chief justice of a High Court becomes vacant, or if any such chief justice is by reason of absence, or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the chief justice has resumed his duties, as the case may be, be per-

formed by such one of the other judges of the court as the Governor-General may in his discretion think fit to appoint for the purpose.

(2) If the office of any other judge of a High Court becomes vacant, or if any such judge is appointed to act temporarily as a chief justice, or is by reason of absence, or for any other reason, unable to perform the duties of his office, the Governor-General may in his discretion appoint a person duly qualified for appointment as a judge to act as a judge of that court, and the person so appointed shall, unless the Governor-General in his discretion thinks fit to revoke his appointment, be deemed to be a judge of that court until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the permanent judge has resumed his duties.

(3) If by reason of any temporary increase in the business of any High Court or by reason of arrears of work in any such court it appears to the Governor-General that the number of the judges of the court should be for the time being increased, the Governor-General in his discretion may, subject to the foregoing provisions of this chapter with respect to the maximum number of judges, appoint persons duly qualified for appointment as judges to be additional judges of the court for such period not exceeding two years as he may specify.

**223.** Subject to the provisions of this Part of this Act, to the provisions of any Order in Council made under this or any other Act and to the provisions of any Act of the appropriate Legislature enacted by virtue of powers conferred on that Legislature by this Act, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make rules of court and to regulate the sittings of the court and of members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of Part III of this Act.

Jurisdiction of existing High Courts.

**224.** (1) Every High Court shall have superintendence over all courts in India for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—

Administrative functions of High Courts.

- (a) call for returns ;
- (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts ;
- (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts ; and
- (d) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts :

Provided that such rules, forms and tables shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(2) Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision.

Transfer of  
certain  
cases to  
High Court  
for trial.

**225.** (1) If on an application made in accordance with the provisions of this section a High Court is satisfied that a case pending in an inferior court, being a case which the High Court has power to transfer to itself for trial, involves or is likely to involve the question of the validity of any Federal or Provincial Act, it shall exercise that power.

(2) An application for the purposes of this section shall not be made except, in relation to a Federal Act, by the Advocate-General for the Federation and, in relation to a Provincial Act, by the Advocate-General for the Federation or the Advocate-General for the Province.

Jurisdiction  
in revenue  
matters.

**226.** (1) Until otherwise provided by Act of the appropriate legislature, no High Court shall have any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

(2) A Bill or amendment for making such provision as aforesaid shall not be introduced into or moved in a Chamber of the Federal or a Provincial Legislature without the previous sanction of the Governor-General in his discretion or, as the case may be, of the Governor in his discretion.

Proceedings  
of High  
Courts to  
be in English.

**227.** All proceedings in every High Court shall be in the English language.

Expenses  
of High  
Courts.

**228.** (1) The administrative expenses of a High Court, including all salaries, allowances and pension payable to or in respect of the officers and servants of the court and the salaries and allowances of the judges of the court shall be charged upon the revenues of the Province, and any fees or other moneys taken by the court shall form part of those revenues.

(2) The Governor shall exercise his individual judgment as to the amount to be included in respect of such expenses as aforesaid in any estimates of expenditure laid by him before the Legislature.

Power of  
His Majesty  
to constitute  
or recon-  
stitute  
High Court  
by letters  
patent.

**229.** (1) His Majesty, if the Chamber or Chambers of the Legislature of any Province present an address in that behalf to the Governor of the Province for submission to His Majesty, may by letters patent constitute a High Court for that Province or any part thereof or reconstitute in like manner any existing High Court for that Province or for any part thereof, or, where there are two High Courts in that Province, amalgamate those courts.

(2) Where any Court is reconstituted, or two Courts are amalgamated, as aforesaid, the letters patent shall provide for the continuance in their respective offices of the existing judges, officers and servants of the Court or Courts, and for the carrying on before the reconstituted Court or the new Court of all pending matters, and may contain such other provisions as may appear to His Majesty to be necessary by reason of the reconstitution or amalgamation.

Extra-  
provincial  
jurisdiction of  
High Courts.

**230.** (1) His Majesty in Council may, if satisfied that an agreement in that behalf has been made between the Governments concerned, extend the jurisdiction of a High Court in any Province to any area in British India not

forming part of that Province, and the High Court shall thereupon have the same jurisdiction in relation to that area as it has in relation to any other area in relation to which it exercises jurisdiction.

(2) Nothing in this section affects the provisions of any law or letters patent in force immediately before the commencement of Part III of this Act empowering any High Court to exercise jurisdiction in relation to more than one Province or in relation to a Province and an area not forming part of any Province.

(3) Where a High Court exercises jurisdiction in relation to any area or areas outside the Province in which it has its principal seat, nothing in this Act shall be construed—

- (a) as empowering the Legislature of the Province in which the Court has its principal seat to increase, restrict or abolish that jurisdiction ; or
- (b) as preventing the Legislature having power to make laws in that behalf for any such area from passing such laws with respect to the jurisdiction of the court in relation to that area as it would be competent to pass if the principal seat of the court were in that area.

**231.** (1) Any judge appointed before the commencement of Part III of this Act to any High Court shall continue in office and shall be deemed to have been appointed under this Part of this Act, but shall not by virtue of this Act be required to relinquish his office at any earlier age than he would have been required so to do, if this Act had not been passed. Saving and definitions.

(2) Where a High Court exercises jurisdiction in relation to more than one Province or in relation to a Province and an area not forming part of a Province, references in this chapter to the Governor in relation to the judges and expenses of a High Court and references to the revenues of the Province shall be construed as references to the Governor and the revenues of the Province in which the Court has its principal seat, and the reference to the approval by the Governor of rules, forms and tables for subordinate courts shall be construed as a reference to the approval thereof by the Governor of the Province in which the subordinate court is situate, or, if it is situate in an area not forming part of a Province, by the Governor-General.

## PART X.<sup>1</sup>

### THE SERVICES OF THE CROWN IN INDIA.

#### CHAPTER I.

#### DEFENCE SERVICES.

**232.<sup>1</sup>** The pay and allowances of the Commander-in-Chief of His Majesty's Forces in India and the other conditions of his service shall be such as His Majesty in Council may direct. Pay, &c., of Commander-in-Chief.

<sup>1</sup> Part X (with the exception of s. 232 which shall not come into force until the establishment of the Federation) came into force on the 1st April, 1937, *see* the Government of India (Commencement and Transitory Provisions) Order, 1936, para. 3.

Control of His Majesty as to defence appointments.

**233.** (1) His Majesty in Council may require that appointments to such offices connected with defence as he may specify shall be made by him or in such manner as he may direct.

(2) Nothing in this section derogates from any power vested in His Majesty by virtue of any Act or by virtue of his Royal Prerogative.

Eligibility for commissions in Indian Forces.

**234.** The power of His Majesty, and of any person authorised in that behalf by His Majesty, to grant commissions in any naval, military or air force raised in India extends to the granting of a commission in any such force to any person who might be, or has been, lawfully enlisted or enrolled in that force.

Control of Secretary of State with respect to conditions of service.

**235.** Without prejudice to the generality of the powers conferred on him by this Act, the Secretary of State may, acting with the concurrence of his advisers, from time to time specify what rules, regulations and orders affecting the conditions of service of all or any of His Majesty's Forces in India shall be made only with his previous approval.

Saving of rights of appeal.

**236.** Nothing in this Act affects any right of appeal which members of His Majesty's Forces in India enjoyed immediately before the passing of this Act, and the Secretary of State may entertain any such memorial from a member of those Forces as the Secretary of State, or the Secretary of State in Council, might previously have entertained.

Pay, etc., of members of forces to be charged on Federal revenues.

**237.** Any sums payable out of the revenues of the Federation in respect of pay, allowances, pensions or other sums payable to, or in respect of, persons who are serving, or have served, in His Majesty's forces shall be charged on those revenues, but nothing herein contained shall be construed as limiting the interpretation of the general provisions of this Act charging on the said revenues expenditure with respect to defence.

Provisions as to certain civilian personnel.

**238.** The provisions of the three last preceding sections shall apply in relation to persons who, not being members of His Majesty's forces, hold, or have held, posts in India connected with the equipment or administration of those forces or otherwise connected with defence, as they apply in relation to persons who are, or have been, members of those forces.

King's India cadetships.

**239.** In the appointment of officers to His Majesty's army the same provision as heretofore, or equal provision, shall be made for the appointment of sons of persons who have served in India in the military or civil service of the Crown.

In this section the reference to persons who have served in India in the military or civil service of the Crown includes persons who have so served in Burma or in Aden before their respective separations from India.

## CHAPTER II.

### CIVIL SERVICES.

#### *General Provisions.*

Tenure of office of persons

**240.** (1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any

civil post under the Crown in India, holds office during His Majesty's pleasure.

employed  
in civil  
capacities  
in India.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided that this subsection shall not apply—

(a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ;  
or

(b) where an authority empowered to dismiss a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.

(4) Notwithstanding that a person holding a civil post under the Crown in India holds office during His Majesty's pleasure, any contract under which a person, not being a member of a civil service of the Crown in India, is appointed under this Act to hold such a post may, if the Governor-General, or, as the case may be, the Governor, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

**241.** (1) Except as expressly provided by this Act, appointments to the civil services of, and civil posts under, the Crown in India, shall, after the commencement of Part III of this Act, be made—

Recruitment  
and condi-  
tions of  
service.

(a) in the case of services of the Federation, and posts in connection with the affairs of the Federation, by the Governor-General, or such person as he may direct ;

(b) in the case of services of a Province, and posts in connection with the affairs of a Province, by the Governor or such person as he may direct.

(2) Except as expressly provided by this Act, the conditions of service of persons serving His Majesty in a civil capacity in India shall, subject to the provisions of this section, be such as may be prescribed—

(a) in the case of persons serving in connection with the affairs of the Federation, by rules made by the Governor-General or by some person or persons authorised by the Governor-General to make rules for the purpose ;

(b) in the case of persons serving in connection with the affairs of a Province, by rules made by the Governor of the Province or



by some person or persons authorised by the Governor to make rules for the purpose :

Provided that it shall not be necessary to make rules regulating the conditions of service of persons employed temporarily on the terms that their employment may be terminated on one month's notice or less, and nothing in this subsection shall be construed as requiring the rules regulating the conditions of service of any class of persons to extend to any matter which appears to the rule-making authority to be a matter not suitable for regulation by rule in the case of that class.

(3) The said rules shall be so framed as to secure—

(a) that, in the case of a person who before the commencement of Part III of this Act was serving His Majesty in a civil capacity in India, no order which alters or interprets to his disadvantage any rule by which his conditions of service are regulated shall be made except by an authority which would have been competent to make such an order on the eighth day of March, nineteen hundred and twenty-six, or by some person empowered by the Secretary of State to give directions in that respect ;

(b) that every such person as aforesaid shall have the same rights of appeal to the same authorities from any order which—

(i) punishes or formally censures him ; or

(ii) alters or interprets to his disadvantage any rule by which his conditions of service are regulated ; or

(iii) terminates his appointment otherwise than upon his reaching the age fixed for superannuation,

as he would have had immediately before the commencement of Part III of this Act, or such similar rights of appeal to such corresponding authorities as may be directed by the Secretary of State or by some person empowered by the Secretary of State to give directions in that respect ;

(c) that every other person serving His Majesty in a civil capacity in India shall have at least one appeal against any such order as aforesaid, not being an order of the Governor-General or a Governor.

(4) Notwithstanding anything in this section, but subject to any other provision of this Act, Acts of the appropriate Legislature in India may regulate the conditions of service of persons serving His Majesty in a civil capacity in India, and any rules made under this section shall have effect subject to the provisions of any such Act :

Provided that nothing in any such Act shall have effect so as to deprive any person of any rights required to be given to him by the provisions of the last preceding subsection.

(5) No rules made under this section and no Act of any Legislature in India shall be construed to limit or abridge the power of the Governor-General or a Governor to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable :

Provided that, where any such rule or Act is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by that rule or Act.

**242.** (1) In its application to appointments to, and to persons serving in, the railway services of the Federation, the last preceding section shall have effect as if for any reference to the Governor-General in paragraph (a) of subsection (1), in paragraph (a) of subsection (2) and in subsection (5) there were substituted a reference to the Federal Railway Authority.

*Application of preceding section to railway, customs, postal and telegraph services, and officials of courts.*

(2) In framing rules for the regulation of recruitment to superior railway posts, the Federal Railway Authority shall consult the Federal Public Service Commission, and in recruitment to such posts and in recruitment generally for railway purposes shall have due regard to the past association of the Anglo-Indian community with railway services in India, and particularly to the specific class, character and numerical percentages of the posts hitherto held by members of that community and the remuneration attaching to such posts, and shall give effect to any instructions which may be issued by the Governor-General for the purpose of securing, so far as practicable to each community in India a fair representation in the railway services of the Federation, but, save as aforesaid, it shall not be obligatory on the Authority to consult with, or otherwise avail themselves of the services of, the Federal Public Service Commission.

(3) In framing the rules for the regulation of recruitment to posts in the customs, postal and telegraph services, the Governor-General or person authorised by him in that behalf shall have due regard to the past association of the Anglo-Indian community with the said services, and particularly to the specific class, character and numerical percentages of the posts previously held in the said services by members of the said community and to the remuneration attaching to such posts.

(4) In its application to appointments to, and to persons serving on, the staff attached to the Federal Court or the staff attached to a High Court, the said section shall have effect as if, in the case of the Federal Court, for any reference to the Governor-General in paragraph (a) of subsection (1), in paragraph (a) of subsection (2) and in subsection (5) there were substituted a reference to the Chief Justice of India and as if, in the case of a High Court, for any reference to the Governor in paragraph (b) of subsection (1), in paragraph (b) of subsection (2) and in subsection (5) there were substituted a reference to the chief justice of the court :

Provided that—

(a) in the case of the Federal Court, the Governor-General and, in the case of a High Court, the Governor may in his discretion

require that in such cases as he may in his discretion direct no person not already attached to the court shall be appointed to any office connected with the court save after consultation with the Federal Public Service Commission, or the Provincial Public Service Commission, as the case may be ;

- (b) rules made under the said subsection (2) by a chief justice shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor-General or, as the case may be, the Governor.

Special  
provisions  
as to police.

**243.** Notwithstanding anything in the foregoing provisions of this chapter the conditions of service of the subordinate ranks of the various police forces in India shall be such as may be determined by or under the Acts relating to those forces respectively.

*Recruitment by Secretary of State and provisions as to certain posts.*

Services  
recruited by  
Secretary of  
State.

**244.** (1) As from the commencement of Part III of this Act appointments to the civil services known as the Indian Civil Service, the Indian Medical Service (Civil), and the Indian Police Service (which last-mentioned service shall thereafter be known as "the Indian Police") shall, until Parliament otherwise determines, be made by the Secretary of State.

(2) Until Parliament otherwise determines, the Secretary of State may also make appointments to any service or services which at any time after the said date he may deem it necessary to establish for the purpose of securing the recruitment of suitable persons to fill civil posts in connection with the discharge of any functions of the Governor-General which the Governor-General is by or under this Act required to exercise in his discretion.

(3) The respective strengths of the said services shall be such as the Secretary of State may from time to time prescribe, and the Secretary of State shall in each year cause to be laid before each House of Parliament a statement of the appointments made thereto and the vacancies therein.

(4) It shall be the duty of the Governor-General to keep the Secretary of State informed as to the operation of this section, and he may after the expiration of such period as he thinks fit make recommendations for the modification thereof.

In discharging his functions under this subsection, the Governor-General shall act in his discretion.

Special pro-  
vision as to  
irrigation.

**245.** Until Parliament otherwise determines, the Secretary of State may for the purpose of securing efficiency in irrigation in any Province, appoint persons to any civil service of, or civil post under, the Crown in India concerned with irrigation.

Reserved  
posts.

**246.** (1) The Secretary of State shall make rules specifying the number and character of the civil posts under the Crown (other than posts in connection with any functions of the Governor-General which the Governor-General

is by or under this Act required to exercise in his discretion), which, subject to the provisions of this subsection, are to be filled by persons appointed by the Secretary of State to a civil service of, or a civil post under, the Crown in India, and except under such conditions as may be prescribed in the rules no such post shall, without the previous sanction of the Secretary of State—

- (a) be kept vacant for more than three months ; or
- (b) be filled otherwise than by the appointment of such a person as aforesaid ; or
- (c) be held jointly with any other such post.

(2) Appointments and postings to the said posts (hereinafter in this Part of this Act referred to as “reserved posts”) shall—

- (a) in the case of posts in connection with the affairs of the Federation, be made by the Governor-General, exercising his individual judgment ;
- (b) in the case of posts in connection with the affairs of a Province, be made by the Governor of the Province, exercising his individual judgment.

(3) All rules made under this section shall, so soon as may be after they are made, be laid before each House of Parliament and, if either House of Parliament within the next subsequent twenty-eight days on which that House has sat after any such rule has been laid before it resolves that the rule shall be annulled, the rule shall thenceforth be void but without prejudice to the validity of anything previously done thereunder or to the making of a new rule.

**247.** (1) The conditions of service of all persons appointed to a civil service or a civil post by the Secretary of State shall—

- (a) as respects pay, leave and pensions, and general rights in regard to medical attendance, be such as may be prescribed by rules to be made by the Secretary of State ;
- (b) as respects other matters with respect to which express provision is not made by this chapter, be such as may be prescribed by rules to be made by the Secretary of State in so far as he thinks fit to make such rules, and, in so far and so long as provision is not made by such rules, by rules to be made, as respects persons serving in connection with the affairs of the Federation, by the Governor-General or some person or persons authorised by the Governor-General to make rules for the purpose and, as respects persons serving in connection with the affairs of a Province, by the Governor of the Province or some person or persons authorised by the Governor to make rules for the purpose :

Conditions of service, pensions, etc., of persons recruited by Secretary of State.

Provided that no rule made under this subsection shall have effect so as to give to any person appointed to a civil service or civil post by the Secretary of State less favourable terms as respects remuneration or pension than

were given to him by the rules in force on the date on which he was first appointed to his service or was appointed to his post.

(2) Any promotion of any person appointed to a civil service or a civil post by the Secretary of State or any order relating to leave of not less than three months of any such person, or any order suspending any such person from office shall, if he is serving in connection with the affairs of the Federation, be made by the Governor-General exercising his individual judgment and, if he is serving in connection with the affairs of a Province, be made by the Governor exercising his individual judgment.

(3) If any such person as aforesaid is suspended from office, his remuneration shall not during the period of his suspension be reduced except to such extent, if any, as may be directed by the Governor-General exercising his individual judgment or, as the case may be, by the Governor exercising his individual judgment.

(4) The salary and allowances of any such person as aforesaid shall, if he is serving in connection with the affairs of the Federation, be charged on the revenues of the Federation and, if he is serving in connection with the affairs of a Province, be charged on the revenues of the Province :

Provided that, if any such person is serving in connection with the railways in India, so much only of his salary and allowances shall be charged on the revenues of the Federation as is not paid out of the Railway Fund.

(5) Pensions payable to or in respect of any such person as aforesaid and government contributions in respect of any such person to any pension fund or provident fund, shall be charged on the revenues of the Federation.

(6) No award of a pension less than the maximum pension allowable under rules made under this section shall be made, except in each case with the consent of the Secretary of State.

(7) No rules made under this section shall be construed to limit or abridge the power of the Secretary of State to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable, and no rules made under this section by any person other than the Secretary of State shall be construed to limit or abridge the power of the Governor-General or, as the case may be, the Governor of a Province to deal with the case of any such person in such manner as may appear to him to be just and equitable.

Provided that, where any rule made under this section is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by the rule.

**Rights in  
respect of  
complaints,  
appeals, etc.**

**248.** (1) If any person appointed to a civil service or a civil post by the Secretary of State is aggrieved by an order affecting his conditions of service and on due application to the person by whom the order was made does not receive the redress to which he considers himself entitled, he may, without prejudice to any other mode of obtaining redress, complain, if he is serving in connection with the affairs of the Federation, to the Governor-General

and, if he is serving in connection with the affairs of a Province, to the Governor of the Province, and the Governor-General or Governor, as the case may be, shall examine into the complaint and cause such action to be taken thereon as appears to him exercising his individual judgment to be just and equitable

(2) No order which punishes or formally censures any such person as aforesaid, or affects adversely his emoluments or rights in respect of pension, or decides adversely to him the subject-matter of any memorial, shall be made except, if he is serving in connection with the affairs of the Federation, by the Governor-General, exercising his individual judgment, or, if he is serving in connection with the affairs of a Province, by the Governor of that Province, exercising his individual judgment.

(3) Any person appointed to a civil service or a civil post by the Secretary of State may appeal to the Secretary of State against any order made by any authority in India which punishes or formally censures him, or alters or interprets to his disadvantage any rule by which his conditions of service are regulated.

(4) Any sums ordered to be paid out of the revenues of the Federation or a Province to or in respect of any such person as aforesaid on an appeal made under this section shall be charged on those revenues.

**249.** (1) If by reason of anything done under this Act the conditions of service of any person appointed to a civil service or a civil post by the Secretary of State have been adversely affected, or if for any other reason it appears to the Secretary of State that compensation ought to be granted to, or in respect of, any such person, he or his representatives shall be entitled to receive from the revenues of the Federation, or if the Secretary of State so directs, from the revenues of a Province, such compensation as the Secretary of State may consider just and equitable.

(2) Any sum payable under this section from the revenues of the Federation or the revenues of a Province shall be charged on the revenues of the Federation or, as the case may be, that Province.

(3) For the avoidance of doubt it is hereby declared that the foregoing provisions of this section in no way prohibit expenditure by the Governor-General, or, as the case may be, the Governor, from the revenues of the Federation or a Province by way of compensation to persons who are serving or have served His Majesty in India in cases to which those provisions do not apply.

*Provisions as to persons appointed by Secretary of State in Council, persons holding reserved posts and commissioned officers in civil employment.*

**250.** (1) Subject to the provisions of this section, the provisions of the four last preceding sections and any rules made thereunder shall apply in relation to any person who was appointed before the commencement of Part III of this Act by the Secretary of State in Council to a civil service persons

appointed  
by Secretary  
of State in  
Council, and  
certain other  
persons.

of, or a civil post under, the Crown in India as they apply in relation to persons appointed to a civil service or civil post by the Secretary of State.

(2) Subject to the provisions of this section, the said sections and rules shall, in such cases and with such exceptions and modifications as the Secretary of State may decide, also apply in relation to any person who—

(a) not being a person appointed as aforesaid by the Secretary of State or the Secretary of State in Council, holds or has held a reserved post; or

(b) holds or has held any civil post under the Crown in India and is, or was when he was first appointed to such a post, an officer in His Majesty's forces.

(3) In relation to any person who was appointed before the commencement of Part III of this Act to a civil service of, or to a civil post under, the Crown in India, the provision contained in the sections aforesaid that no rule as to conditions of service shall have effect so as to give to any person less favourable terms as regards remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service or was appointed to his post, shall be construed as a provision that no such rule shall have effect so as to give to any person less favourable terms as respects the said matters than were given to him by the rules in force immediately before the coming into operation of the rule.

(4) In its application, by virtue of this section, to persons serving in the railway services of the Federation, the second of the four last preceding sections (which relates to the conditions of service, pensions, etc., of persons recruited by the Secretary of State) shall have effect as if for any reference to the Governor-General in paragraph (b) of subsection (1) thereof and in subsections (2), (3) and (7) thereof there were substituted a reference to the Federal Railway Authority.

(5) Any liability of the Federation or of any Province to or in respect of any person appointed before the commencement of Part III of this Act by the Secretary of State in Council to a civil service of, or a civil post under, the Crown in India, being a liability to pay a pension granted to or in respect of any such person or any other liability of such a nature as to have been enforceable in legal proceedings against the Secretary of State in Council if this Act had not been passed, shall, notwithstanding anything in this Act, be deemed, for the purposes of the provisions of Part VII of this Act relating to legal proceedings, to be a liability arising under a statute passed before the commencement of Part III of this Act.

*Special provisions as to staffs of the High Commissioner for India and the Auditor of Indian Home Accounts.*

Staff of  
High Com-  
missioner

**251.** The provisions of this Part of this Act shall apply in relation to appointments, to and to persons serving on the staffs of the High Commis-

sioner for India and the Auditor of Indian Home Accounts as if the service of members of those staffs were service rendered in India :

and Auditor  
of Indian  
Home  
Accounts.

Provided that—

- (a) appointments to the staff of the Auditor of Indian Home Accounts shall be made by him subject, as respects numbers, salaries and qualifications, to the approval of the Governor-General in his discretion ; and
- (b) in relation to that staff the functions of the Governor-General under this Part of this Act shall be exercised by him in his discretion.

**252.** (1) All persons who immediately before the commencement of Part III of this Act were members of the staff of the High Commissioner for India, or members of the staff of the Auditor of the accounts of the Secretary of State in Council, shall continue to be, or shall become, members of the staff of the High Commissioner for India or, as the case may be, of the Auditor of Indian Home Accounts.

Conditions  
of service  
of existing  
staff of  
High Com-  
missioner  
and Auditor  
of Indian  
Home  
Accounts.

(2) All such persons as aforesaid shall hold their offices or posts subject to like conditions of service as to remuneration, pensions or otherwise, as theretofore, or not less favourable conditions, and shall be entitled to reckon for purposes of pension any service which they would have been entitled to reckon if this Act had not been passed.

(3) The salaries, allowances and pensions payable to, or in respect of, such of the persons aforesaid as were members of the staff of the Auditor of the accounts of the Secretary of State in Council shall be charged on the revenues of the Federation, and the salaries, allowances and pensions payable to, or in respect of, other such persons as aforesaid shall be so charged in so far as those salaries, allowances and pensions would, but for the passing of this Act, have been payable without being submitted to the vote of the Legislative Assembly of the Indian Legislature.

*Special Provisions as to Judicial Officers.*

**253.** (1) The provisions of this chapter shall not apply to the judges of the Federal Court or of any High Court :

Judges of  
the Federal  
Court and  
High Courts.

Provided that—

- (a) for the purposes of this section a member of any of the civil services of the Crown in India who is acting temporarily as a judge of a High Court shall not be deemed to be a judge of that court :
- (b) nothing in this section shall be construed as preventing the Orders in Council relating to the salaries, leave and pensions of judges of the Federal Court, or of any High Court, from applying to such of those judges as were, before they were appointed judges, members of a civil service of the Crown in India, such of the rules relating to that service as may appear to His Majesty to be properly applicable in relation to them :



- (c) nothing in this section shall be construed as excluding the office of judge of the Federal Court or of a High Court from the operation of the provisions of this chapter with respect to the eligibility for civil office of persons who are not British subjects.

(2) Any pension which under the rules in force immediately before the commencement of Part III of this Act was payable to or in respect of any person who, having been a judge of a High Court within the meaning of this Act or of the High Court at Rangoon, retired before the commencement of the said Part III shall, notwithstanding anything in this Act or the Government of Burma Act, 1935, continue to be payable in accordance with those rules and shall be charged on the revenues of the Federation. 26 Geo. 5,  
c. 3.

(3) Any liability of the Federation or of any Province to or in respect of any person who is, at the commencement of Part III of this Act, a judge of a High Court within the meaning of this Act, or to or in respect of any such person as is mentioned in subsection (2) of this section, being a liability to pay a pension granted to or in respect of any such person or any other liability of such a nature as to have been enforceable in legal proceedings against the Secretary of State in Council if this Act had not been passed, shall, notwithstanding anything in this Act or the Government of Burma Act, 1935, be deemed, for the purposes of the provisions of Part VII of this Act relating to legal proceedings, to be a liability arising under a statute passed before the commencement of Part III of this Act.

**District  
judges, etc.**

**254.** (1) Appointments of persons to be, and the posting and promotion of, district judges in any Province shall be made by the Governor of the Province, exercising his individual judgment, and the High Court shall be consulted before a recommendation as to the making of any such appointment is submitted to the Governor.

(2) A person not already in the service of His Majesty shall only be eligible to be appointed a district judge if he has been for not less than five years a barrister, a member of the Faculty of Advocates in Scotland, or a pleader and is recommended by the High Court for appointment.

(3) In this and the next succeeding section the expression "district judge" includes additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, sessions judge, additional sessions judge, and assistant sessions judge.

**Subordinate  
civil judicial  
service.**

**255.** (1) The Governor of each Province shall, after consultation with the Provincial Public Service Commission and with the High Court, make rules defining the standard of qualifications to be attained by persons desirous of entering the subordinate civil judicial service of a Province.

In this section, the expression "subordinate civil judicial service" means a service consisting exclusively of persons intended to fill civil judicial posts inferior to the post of district judge.

(2) The Provincial Public Service Commission for each Province, after holding such examinations, if any, as the Governor may think necessary,

shall from time to time out of the candidates for appointment to the subordinate civil judicial service of the Province make a list or lists of the persons whom they consider fit for appointment to that service, and appointments to that service shall be made by the Governor from the persons included in the list or lists in accordance with such regulations as may from time to time be made by him as to the number of persons in the said service who are to belong to the different communities in the Province.

(3) The posting and promotion of, and the grant of leave to, persons belonging to the subordinate civil judicial service of a Province and holding any post inferior to the post of district judge, shall be in the hands of the High Court, but nothing in this section shall be construed as taking away from any such person the right of appeal required to be given to him by the foregoing provisions of this chapter, or as authorising the High Court to deal with any such person otherwise than in accordance with the conditions of his service prescribed thereunder.

**256.** No recommendation shall be made for the grant of magisterial powers or of enhanced magisterial powers, to, or the withdrawal of any magisterial powers from, any person save after consultation with the district magistrate of the district in which he is working or with the Chief Presidency magistrate, as the case may be. Subordinate criminal magistracy.

*Special Provisions as to Political Department.*

**257.** (1) Subject to the provisions of this section, the provisions of this Part of this Act shall not apply in relation to persons wholly or mainly employed in connection with the exercise of the functions of the Crown in its relations with Indian States. Officers of political department.

(2) Notwithstanding anything in the preceding subsection, all persons so employed immediately before the commencement of Part III of this Act shall hold their offices or posts subject to the like conditions of service as to remuneration, pensions or otherwise as theretofore or not less favourable conditions, and in relation to those persons anything which might, but for the passing of this Act, have been done by or in relation to the Secretary of State in Council shall be done by or in relation to the Secretary of State, acting with the concurrence of his advisers.

(3) Nothing in this section shall be construed as affecting the application to such persons of the rule of law that, except as otherwise provided by statute, every person employed under the Crown holds office during His Majesty's pleasure.

*Provisions for the protection of certain existing officers.*

**258.** (1) No civil post which, immediately before the commencement of Part III of this Act, was a post in, or a post required to be held by some member of, a Central Service Class I, a Central Service Class II, a Railway Service Class I, a Railway Service Class II, or a Provincial Service, shall, if Provision for protection of existing officers of certain Services.

the abolition thereof would adversely affect any person who immediately before the said date was a member of any such service, be abolished, except—

- (a) in the case of a post in connection with the affairs of the Federation, by the Governor-General exercising his individual judgment;
- (b) in the case of a post in connection with the affairs of a Province, by the Governor of the Province exercising his individual judgment.

(2) No rule or order affecting adversely the pay, allowances or pensions payable to, or in respect of, a person appointed before the coming into operation of this Part of this Act to a Central Service Class I, to a Railway Service Class I, or to a Provincial service, and no order upon a memorial submitted by any such person, shall be made except—

- (a) in the case of a person who is serving or has served in connection with the affairs of the Federation, by the Governor-General exercising his individual judgment;
- (b) in the case of a person who is serving or has served in connection with the affairs of a Province, by the Governor of the Province exercising his individual judgment.

(3) In relation to any person mentioned in this section who was appointed to a civil service of, or civil post under, the Crown in India by the Secretary of State or the Secretary of State in Council, or is an officer in His Majesty's forces, the foregoing provisions of this section shall have effect as if for the reference to the Governor-General or the Governor, as the case may be, there was substituted a reference to the Secretary of State.

Provisions as to certain persons serving in or before 1924.

**259.** (1) The salary and allowances of any person who was appointed before the first day of April, nineteen hundred and twenty-four, otherwise than by the Secretary of State in Council, to a service or a post which at any time between that date and the coming into operation of this Part of this Act was classified as a superior service or post shall be charged, if he is serving in connection with the affairs of the Federation, on the revenues of the Federation and, if he is serving in connection with the affairs of a Province, on the revenues of that Province :

Provided that, if any such person as aforesaid is serving in connection with the railways in India, so much only of his salary and allowances shall be charged on the revenues of the Federation as is not paid out of the railway fund.

(2) Any pension payable to or in respect of a person appointed as aforesaid, and any government contributions to any provident fund or pensions fund in respect of any such person, shall be charged on the revenues of the Federation.

(3) The provisions of the last preceding subsection shall also apply in relation to persons who retired before the first day of April, nineteen hundred and twenty-four, and before they retired belonged to services or held post

which were as from the said date classified as superior services or posts, or which are declared by the Secretary of State to have been services or posts equivalent in character to services or posts so classified.

**260.** (1) Except as otherwise expressly provided in this chapter, any pension payable to or in respect of any person who, having been appointed to a civil service of, or a civil post under, the Crown in India, retired from the service of His Majesty before the commencement of Part III of this Act shall, if it would have been payable by the Local Government in any Province if this Act had not passed, be paid out of the revenues of the corresponding Province and in any other case shall be paid out of the revenues of the Federation.

General provisions as to persons retiring before commencement of Part III.

(2) Any pension payable to or in respect of any person who, having served in Burma or Aden, retired from an All-India Service, a Central Service Class I, a Central Service Class II, a Railway Service Class I, or a Railway Service Class II, before the commencement of Part III of this Act shall be paid out of the revenues of the Federation, but save as aforesaid nothing in this section applies to any person who retired after service in Burma or Aden.

#### *Miscellaneous.*

**261.** The powers conferred by this and the subsequent chapters of this Part of this Act on the Secretary of State shall not be exercisable by him except with the concurrence of his advisers.

Secretary of State to act with concurrence of his advisers. Eligibility for office of persons who are not British subjects.

**262.** (1) The Ruler or a subject of a Federated State shall be eligible to hold any civil office under the Crown in India in connection with the affairs of the Federation, and the Governor-General may declare that the Ruler or any subject of a specified Indian State which is not a Federated State, or any native of a specified tribal area or territory adjacent to India, shall be eligible to hold any such office, being an office specified in the declaration.

(2) The Governor of a Province may declare that the Ruler or any subject of a specified Indian State, or any native of a specified tribal area or territory adjacent to India, shall be eligible to hold any civil office in connection with the affairs of the Province, being an office specified in the declaration.

(3) The Secretary of State may declare that any named subject of an Indian State, or any named native of a tribal area or territory adjacent to India, shall be eligible for appointment by him to any civil service under the Crown in India to which he makes appointments, and any person who, having been so declared eligible, is appointed to such a service, shall be eligible to hold any civil office under the Crown in India.

(4) Subject as aforesaid and to any other express provisions of this Act, no person who is not a British subject shall be eligible to hold any office under the Crown in India :

Provided that the Governor-General or, in relation to a Province, the Governor may authorise the temporary employment for any purpose of a person who is not a British subject.

(5) In the discharge of his functions under this section the Governor-General or the Governor of a Province shall exercise his individual judgment.

Joint services  
and posts.

**263.** If an agreement is made between the Federation and one or more Provinces, or between two or more Provinces, for the maintenance or creation of a service common to the Federation and one or more Provinces, or common to two or more Provinces, or for the maintenance or creation of a post the functions whereof are not restricted to the affairs of the Federation or one Province, the agreement may make provision that the Governor-General or any Governor, or any Public Service Commission, shall do in relation to that service or post anything which would under the provisions of this chapter be done by the Governor or the Provincial Public Service Commission if the service or post was a service or post in connection with the affairs of one Province only.

### CHAPTER III.

#### PUBLIC SERVICE COMMISSIONS.

Public  
Service  
Commis-  
sions.

**264.** (1) Subject to the provisions of this section, there shall be a Public Service Commission for the Federation and a Public Service Commission for each Province.

(2) Two or more Provinces may agree—

- (a) that there shall be one Public Service Commission for that group of Provinces ; or
- (b) that the Public Service Commission for one of the Provinces shall serve the needs of all the Provinces.

and any such agreement may contain such incidental and consequential provisions as may appear necessary or desirable for giving effect to the purposes of the agreement and shall, in the case of an agreement that there shall be one Commission for a group of Provinces, specify by what Governor or Governors the functions which are under this Part of this Act to be discharged by the Governor of a Province are to be discharged.

(3) The Public Service Commission for the Federation if requested so to do by the Governor of a Province may, with the approval of the Governor-General, agree to serve all or any of the needs of the Province.

(4) References in this Act to the Federal Public Service Commission or a Provincial Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Federation or, as the case may be, the Province as respects the particular matter in question.

Composition  
and staff of  
Commissions.

**265.** (1) The chairman and other members of a Public Service Commission shall be appointed, in the case of the Federal Commission, by the Governor-General in his discretion, and in the case of a Provincial Commission, by the Governor of the Province in his discretion :

Provided that at least one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years under the Crown in India.

(2) In the case of the Federal Commission, the Governor-General in his discretion and, in the case of a Provincial Commission, the Governor of the Province in his discretion, may by regulations—

- (a) determine the number of members of the commission, their tenure of office and their conditions of service ; and
  - (b) make provision with respect to the numbers of staff of the commission and their conditions of service.
- (3) On ceasing to hold office—
- (a) the chairman of the Federal Commission shall be ineligible for further employment under the Crown in India ;
  - (b) the chairman of a Provincial Commission shall be eligible for appointment as the chairman or a member of the Federal Commission, or as the chairman of another Provincial Commission, but not for any other employment under the Crown in India.
  - (c) no other member of the Federal or of any Provincial Commission shall be eligible for any other appointment under the Crown in India without the approval, in the case of an appointment in connection with the affairs of a Province, of the Governor of the Province in his discretion and, in the case of any other appointment, of the Governor-General in his discretion.

**266.** (1) It shall be the duty of the Federal and the Provincial Public Service Commissions to conduct examinations for appointments to the services of the Federation and the services of the Province respectively.

**Functions  
of Public  
Service Com-  
missions.**

(2) It shall also be the duty of the Federal Public Service Commission, if requested by any two or more Provinces so to do, to assist those Provinces in framing and operating schemes of joint recruitment for their forest services, and any other services for which candidates possessing special qualifications are required.

(3) The Secretary of State as respects services and posts to which appointments are made by him, the Governor-General in his discretion as respects other services and posts in connection with the affairs of the Federation, and the Governor in his discretion as respects other services and posts in connection with the affairs of a Province, may make regulations specifying the matters on which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted but, subject to regulations so made and to the provisions of the next succeeding subsection, the Federal Commission or, as the case may be, the Provincial Commission shall be consulted—

- (a) on all matters relating to methods of recruitment to civil services and for civil posts ;

- (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers ;
- (c) on all disciplinary matters affecting a person serving His Majesty in a civil capacity in India, including memorials or petitions relating to such matters ;
- (d) on any claim by or in respect of a person who is serving or has served His Majesty in a civil capacity in India that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of the Federation or, as the case may be, the Province ;
- (e) on any claim for the award of a pension in respect of injuries sustained by a person while serving His Majesty in a civil capacity in India, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the Governor-General in his discretion, or, as the case may be, the Governor in his discretion, may refer to them.

(4) Nothing in this section shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be allocated as between the various communities in the Federation or a Province or, in the case of the subordinate ranks of the various police forces in India, as respects any of the matters mentioned in paragraphs (a), (b) and (c) of subsection (3) of this section.

Power to  
extend  
functions  
of Public  
Service Com-  
missions.

**267.** Subject to the provisions of this section, an Act of the Federal Legislature or the Provincial Legislature may provide for the exercise of additional functions by the Federal Public Service Commission or, as the case may be, by the Provincial Public Service Commission :

Provided that—

- (a) no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, or as the case may be, of the Governor in his discretion ; and
- (b) it shall be a term of every such Act that the functions conferred by it shall not be exercisable—
  - (i) in relation to any person appointed to a service or a post by the Secretary of State or the Secretary of State in Council, any officer in His Majesty's Forces, or any holder of a reserved post, except with the consent of the Secretary of State ; or
  - (ii) where the Act is a provincial Act, in relation to any person who is not a member of one of the services of the Province, except with the consent of the Governor-General.

**268.** The expenses of the Federal or a Provincial Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the revenues of the Federation or, as the case may be, the Province :

Expenses of Public Service Com-missions.

Provided that nothing in this section shall charge on the revenues of a Province any pension which is by virtue of the provisions of chapter II of this Part of this Act charged on the revenues of the Federation.

#### CHAPTER IV.

##### CHAPLAINS.

**269.** (1) There may, as heretofore, be an establishment of chaplains to minister in India to be appointed by the Secretary of State and the provisions of chapter II of this Part of this Act shall, with any necessary modifications, apply in relation to that establishment and to persons appointed as chaplains by the Secretary of State or by the Secretary of State in Council, as they apply in relation to the civil services to which appointments are to be made by the Secretary of State and to persons appointed to a civil service under the Crown in India by the Secretary of State or by the Secretary of State in Council, and for the purposes of the provisions of chapter II relating to persons who retired before the commencement of Part III of this Act the said establishment shall be deemed to be an all-India service.

Provisions as to chaplains.

(2) So long as an establishment of chaplains is maintained in the Province of Bengal, two members of that establishment in the Province must always be ministers of the Church of Scotland and shall be entitled to have out of the revenues of the Federation such salary as is from time to time allotted to the military chaplains in that Province.

This subsection applies to the Province of Madras and to the Province of Bombay as it applies to the Province of Bengal.

(3) The ministers of the Church of Scotland so appointed chaplains must be ordained and inducted by the Presbytery of Edinburgh according to the forms and solemnities used in the Church of Scotland, and shall be subject to the spiritual and ecclesiastical jurisdiction in all things of the Presbytery of Edinburgh, whose judgments shall be subject to dissent, protest and appeal to the Provincial Synod of Lothian and Tweeddale and to the General Assembly of the Church of Scotland.

#### CHAPTER V.

##### GENERAL.

**270.** (1) No proceedings civil or criminal shall be instituted against any person in respect of any act done or purporting to be done in the execution

Indemnity for past acts.



of his duty as a servant of the Crown in India or Burma before the relevant date, except with the consent, in the case of a person who was employed in connection with the affairs of the Government of India or the affairs of Burma, of the Governor-General in his discretion, and in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province in his discretion.

(2) Any civil or criminal proceedings instituted, whether before or after the coming into operation of this Part of this Act, against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date shall be dismissed unless the court is satisfied that the acts complained of were not done in good faith, and, where any such proceedings are dismissed, the costs incurred by the defendant shall, in so far as they are not recoverable from the persons instituting the proceedings, be charged, in the case of persons employed in connection with the functions of the Governor-General in Council or the affairs of Burma, on the revenues of the Federation, and in the case of persons employed in connection with the affairs of a Province on the revenues of that Province.

(3) For the purposes of this section—

the expression “the relevant date” means, in relation to acts done by persons employed about the affairs of a Province or about the affairs of Burma, the commencement of Part III of this Act and, in relation to acts done by persons employed about the affairs of the Federation, the date of the establishment of the Federation ;

references to persons employed in connection with the functions of the Governor-General in Council include references to persons employed in connection with the affairs of any Chief Commissioner’s Province ;

a person shall be deemed to have been employed about the affairs of a Province if he was employed about the affairs of the Province as constituted at the date when the act complained of occurred or is alleged to have occurred.

**Protection  
of public  
servants  
against pro-  
secutions  
and suits.**

**271.** (1) No Bill or amendment to abolish or restrict the protection afforded to certain servants of the Crown in India by section one hundred and ninety-seven of the Indian Code of Criminal Procedure, or by sections eighty to eighty-two of the Indian Code of Civil Procedure, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(2) The powers conferred upon a Local Government by the said section one hundred and ninety-seven with respect to the sanctioning of prosecutions and the determination of the court before which, the person by whom and

the manner in which, a public servant is to be tried, shall be exercisable only—

- (a) in the case of a person employed in connection with the affairs of the Federation, by the Governor-General exercising his individual judgment; and
- (b) in the case of a person employed in connection with the affairs of a Province, by the Governor of that Province exercising his individual judgment:

Provided that nothing in this subsection shall be construed as restricting the power of the Federal or a Provincial Legislature to amend the said section by a Bill or amendment introduced or moved with such previous sanction as is mentioned in subsection (1) of this section.

(3) Where a civil suit is instituted against a public officer, within the meaning of that expression as used in the Indian Code of Civil Procedure, in respect of any act purporting to be done by him in his official capacity, the whole or any part of the costs incurred by him and of any damages or costs ordered to be paid by him shall, if the Governor-General exercising his individual judgment so directs in the case of a person employed in connection with the affairs of the Federation, or if the Governor exercising his individual judgment so directs in the case of a person employed in connection with the affairs of a Province, be defrayed out of and charged on the revenues of the Federation or of the Province as the case may be.

**272.** Any pension payable to or in respect of a person who—

- (a) before the commencement of Part III of this Act had served His Majesty in India, Burma or Aden, or elsewhere under the Governor-General in Council; or
- (b) after the commencement of Part III of this Act—
  - (i) serves in India as an officer of His Majesty's forces; or
  - (ii) is appointed to a civil service of, or to an office or post under, the Crown in India by His Majesty or the Secretary of State; or
  - (iii) holds a reserved post,

Provisions as to payment of certain pensions and exemption of those pensions from taxation in India.

shall, if the person to whom the pension is payable is residing permanently outside India, be paid on behalf of the Federation or the Province, as the case may be, by, or in accordance with arrangements made with, the Secretary of State, and be exempt from all taxation imposed by or under any existing Indian law, or any law of the Federal or of a Provincial Legislature.

**273.** (1) His Majesty may by Order in Council provide for the vesting in Commissioners to be appointed under the Order of—

- (a) the Indian Military Widows and Orphans Fund;
- (b) the Superior Services (India) Family Pension Fund;

Provisions as to family pension funds.

- (c) a fund to be formed out of the moneys contributed and to be contributed under the Indian Military Service Family Pension Regulations for the purpose of paying pensions payable under those regulations ;
- (d) a fund to be formed out of the moneys contributed and to be contributed under the Indian Civil Service Family Pension Rules for the purpose of paying pensions payable under those rules,

for the investment of the said funds by the Commissioners, in such manner as, subject to the provisions of the Order, they think fit, for the administration of the said funds in other respects by the Secretary of State, for the remuneration of the Commissioners out of the said funds, and for any other matters incidental to or consequential on the purposes of the Order ; and if any such Order is made, then, as from such date as may be specified in the Order, any pensions payable under the said regulations and rules, shall, subject to the provisions of subsection (3) of this section be payable out of the appropriate fund in the hands of the Commissioners, and not otherwise.

Before recommending His Majesty to make any Order in Council under this subsection, the Secretary of State shall consider any representations made to him by any of the existing subscribers and beneficiaries or by any persons appearing to him to represent any body of those subscribers or beneficiaries.

(2) Any such Order as aforesaid shall provide that the balance in the hands of the Governor-General on the thirty-first day of March next following the passing of this Act in respect of the Indian Military Widows and Orphans Fund and the Superior Services (India) Family Pension Fund, and in respect of the moneys theretofore contributed under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules shall, subject to the provisions of subsection (3) of this section, be transferred to the Commissioners before the expiration of three years from the said date either all at one time or by instalments, together with such interest as may be prescribed by or under the Order :

Provided that His Majesty in Council may, if it appears to him necessary so to do, extend the said period of three years.

(3) Any such Order as aforesaid shall provide for the making of objections by and on behalf of existing subscribers and beneficiaries to the vesting of any such fund as aforesaid in the Commissioners and, if any objection is so made in the manner and within the time limited by the Order—

- (a) so much of any money in the hands of the Governor-General as represents the interest of the objector shall not be transferred to the Commissioners, but shall be dealt with as part of the revenues of the Federation ; and
- (b) in lieu of any pensions which might be payable out of the said funds to or in respect of the objectors there shall be payable out of the revenues of the Federation to and in respect of the said persons such pensions on such conditions as may be specified in rules to be made by the Secretary of State.

(4) Any such Order as aforesaid may, notwithstanding anything in this Part of this Act or in the regulations or rules relating to the fund in question, provide for the making of such alterations in any pensions payable out of the fund to which the Order relates as may be reasonably necessary in consequence of the transfer effected under the Order.

(5) Any interest or dividends received by the Commissioners on sums forming part of any fund vested in them under this section shall be exempt from income tax in the United Kingdom, and estate duty shall not be payable in Great Britain, nor, if the Parliament of Northern Ireland so provides, in Northern Ireland, in respect of any pension payable under the regulations or rules relating to any such fund.

(6) In this section—

references to the Indian Military Service Family Pension Regulations or the Indian Civil Service Family Pension Rules shall be construed as including references to any regulations or rules which may be substituted therefor ;

the expression “existing subscribers and beneficiaries” means, in relation to the Indian Military Widows and Orphans Fund and the Superior Services (India) Family Pension Fund, persons who have subscribed to, or are or have been in receipt of pensions from, those funds, and, in relation to the funds to be formed out of the moneys contributed under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules, persons who have contributed under, or are or have been in receipt of pensions payable under, the regulations or rules, not being persons who have surrendered or forfeited their interest in the fund or, as the case may be, their interest under the regulations or rules ;

references to pensions payable under the said regulations or the said rules do not include references to any pension or portion of a pension payable otherwise than out of the moneys contributed and to be contributed under those regulations or rules ;

references to moneys so contributed, or to be so contributed, include references to interest upon such moneys.

(7) Notwithstanding anything in this Act, and in particular notwithstanding the separation of Burma and Aden from India, the provisions of this section shall apply in relation to persons who, before the commencement of Part III of this Act, were serving His Majesty in India, Burma or Aden, and after the commencement thereof continue to serve His Majesty in Burma or Aden, as they apply in relation to other persons who are serving or have served His Majesty in India, and accordingly the regulations and rules relating to any such fund may apply in relation to any such persons as aforesaid.

If any Order in Council is made under this section, and if provision in that behalf is made by the Acts or rules relating to conditions of service of

persons serving His Majesty in Burma, the said regulations and rules may also extend to persons appointed to the service of the Crown in Burma after the commencement of Part III of this Act.

Saving for  
certain  
Funds Acts.

**274.** Notwithstanding anything in this Act, the India Military Funds Act, 1866<sup>1</sup>, the East India Annuity Funds Act, 1874<sup>1</sup>, and the Bombay Civil Fund Act, 1882<sup>1</sup>, shall continue to have effect but subject to the following adaptations, that is to say, that anything to be done under the said Acts by or to the Secretary of State in Council shall, after the commencement of Part III of this Act, be done by or to the Secretary of State, and for any reference in the said Acts to the revenues of India there shall be substituted a reference to the revenues of the Federation.

29 & 30  
Vict., c. 18.  
37 & 38  
Vict., c. 12.  
45 & 46  
Vict. c. 45.

Persons not  
to be dis-  
qualified by  
sex for hold-  
ing certain  
offices.

**275.** A person shall not be disqualified by sex for being appointed to any civil service of, or civil post under, the Crown in India other than such a service or post as may be specified by any general or special order made—

- (a) by the Governor-General in the case of services and posts in connection with the affairs of the Federation ;
- (b) by the Governor of a Province in the case of services and posts in connection with the affairs of the Province ;
- (c) by the Secretary of State in relation to appointments made by him :

Provided that any such agreement with respect to joint services and posts as is mentioned in chapter II of this Part of this Act may provide for the powers conferred by this section on the Governor-General and the Governor of a Province being exercised, with respect to the services or posts to which the agreement applies, by the Governor-General or a specified Governor.

Transitional  
provisions.

**276.** Until other provision is made under the appropriate provisions of this Part of this Act, any rules made under the Government of India Act relating to the civil services of, or civil posts under, the Crown in India which were in force immediately before the commencement of Part III of this Act, shall, notwithstanding the repeal of that Act, continue in force so far as consistent with this Act, and shall be deemed to be rules made under the appropriate provisions of this Act.

Interpreta-  
tion, etc.

**277.** (1) In this Part of this Act—

the expressions “all-India Service,” “Central Service Class I,” “Central Service Class II,” “Railway Service Class I,” “Railway Service Class II” and “Provincial Service” mean respectively the services which were immediately before the commencement of Part III of this Act, so described respectively in the classification rules then in force under section ninety-six B of the Government of India Act ; and

references to dismissal from His Majesty’s service include references to removal from His Majesty’s service.

<sup>1</sup>See Vol. I of this publication.

(2) References in this Part of this Act to persons appointed to a civil service of, or a civil post under, the Crown in India—

(a) include references to persons who, after service in India, Burma, or Aden, retired from the service of His Majesty before the commencement of Part III of this Act ;

(b) do not include references to persons so appointed who, after the commencement of Part III of this Act, become members of a civil service of, or hold civil posts under, the Crown in Burma or Aden.

(3) The inclusion in this Part of this Act of provisions expressly requiring the Governor-General or a Governor to exercise his individual judgment with respect to any matter shall not be construed as derogating from the special responsibility of the Governor-General and the Governors for the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests.

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## PART XI.<sup>1</sup>

### THE SECRETARY OF STATE, HIS ADVISERS AND HIS DEPARTMENT.

**278.** (1) There shall be a body of persons appointed by the Secretary of State, not being less than three nor more than six in number, as the Secretary of State may from time to time determine, whose duty it shall be to advise the Secretary of State on any matter relating to India on which he may desire their advice.

(2) One-half at least of the persons for the time being holding office under this section as advisers of the Secretary of State shall be persons who have held office for at least ten years under the Crown in India and have not last ceased to perform in India official duties under the Crown more than two years before the date of their respective appointments as advisers under this section.

(3) Any person appointed as an adviser to the Secretary of State shall hold office for a term of five years and shall not be eligible for reappointment :

Provided that—

(a) any person so appointed may by writing under his hand resign his office to the Secretary of State ;

(b) the Secretary of State may, if he is satisfied that any person so appointed has by reason of infirmity of mind or body become unfit to continue to hold his office, by order remove him from his office.

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<sup>1</sup> Part XI came into force on the 1st April, 1937, *see* the Government of India (Commencement and Transitory Provisions) Order, 1936, para. 3.

(4) A person for the time being holding office as adviser to the Secretary of State shall not be capable of sitting or voting in either House of Parliament.

(5) There shall be paid out of moneys provided by Parliament to each of the advisers of the Secretary of State a salary of thirteen hundred and fifty pounds a year, and also to any of them who at the date of his appointment was domiciled in India a subsistence allowance of six hundred pounds a year.

(6) Except as otherwise expressly provided in this Act, it shall be in the discretion of the Secretary of State whether or not he consults with his advisers on any matter, and, if so, whether he consults with them collectively or with one or more of them individually, and whether or not he acts in accordance with any advice given to him by them.

(7) Any provision of this Act which requires that the Secretary of State shall obtain the concurrence of his advisers shall be deemed to be satisfied if at a meeting of his advisers he obtains the concurrence of at least one-half of those present at the meeting, or if such notice and opportunity for objection as may be prescribed has been given to those advisers and none of them has required that a meeting shall be held for discussion of the matter.

In this subsection "prescribed" means prescribed by rules of business made by the Secretary of State after obtaining at a meeting of his advisers the concurrence of at least one-half of those present at the meeting.

(8) The Council of India as existing immediately before the commencement of Part III of this Act shall be dissolved.

(9) Notwithstanding anything in the foregoing provisions of this section, a person who immediately before the commencement of Part III of this Act was a member of the Council of India may be appointed under this section as an adviser to the Secretary of State to hold office as such for such period less than five years as the Secretary of State may think fit.

Existing  
accounts of  
Secretary of  
State in  
Council with  
Bank of  
England.

**279.** (1) All stock or money standing to the credit of the Secretary of State in Council in the books of the Bank of England at the commencement of Part III of this Act shall, as from that date, be transferred to the credit of the Secretary of State, and any order or instrument with respect to that stock or money executed by the Secretary of State or by such person as may be authorised in writing by the Secretary of State for the purpose, either generally or specially, shall be a sufficient authority and discharge to the Bank in respect of anything done by the Bank in accordance therewith.

(2) Any directions, authority or power of attorney given or executed by or on behalf of the Secretary of State in Council and in force at the commencement of Part III of this Act shall continue in force until countermanded or revoked by the Secretary of State.

Organisation  
and expenses  
of India  
Office.

**280.** (1) As from the commencement of Part III of this Act the salary of the Secretary of State and the expenses of his department, including the salaries and remuneration of the staff thereof, shall be paid out of moneys provided by Parliament.

(2) Subject to the provisions of the next succeeding section with respect to the transfer of certain existing officers and servants, the Secretary of State may appoint such officers and servants as he, subject to the consent of the Treasury as to numbers, may think fit and there shall be paid to persons so appointed such salaries or remuneration as the Treasury may from time to time determine.

(3) There shall be charged on and paid out of the revenues of the Federation into the Exchequer such periodical or other sums as may from time to time be agreed between the Governor-General and the Treasury in respect of so much of the expenses of the department of the Secretary of State as is attributable to the performance on behalf of the Federation of such functions as it may be agreed between the Secretary of State and the Governor-General that that department should so perform.

**281.** (1) All persons who immediately before the commencement of Part III of this Act were officers or servants on the permanent establishment of the Secretary of State in Council shall on that date be transferred to the department of the Secretary of State and shall be deemed to be permanent Civil Servants of the State. Transfer of existing personnel.

(2) Subject as hereinafter provided, the provisions of the Superannuation Acts, 1834 to 1935, and of any orders, rules and regulations made thereunder shall apply in relation to a person so transferred as aforesaid as they apply in relation to a person entering the Civil Service with a certificate from the Civil Service Commissioners, and for the purposes of those Acts, orders, rules and regulations his service shall be reckoned as if service on the permanent establishment of, and employment by, the Secretary of State in Council had at all times been service or employment in a public department the expenses whereof were wholly defrayed out of moneys provided by Parliament :

9 Edw. 7,  
c. 10.  
25 & 26  
Geo. 5, c. 23.

Provided that neither the Superannuation Act, 1909, nor section four of the Superannuation Act, 1935, shall apply in relation to any person so transferred unless that Act, or, as the case may be, that section (as applicable to persons on the permanent establishment of the Secretary of State in Council) would have applied in relation to him if this Act had not been passed.

(3) His Majesty may by Order in Council direct that in their application to any person so transferred the said Acts, orders, rules and regulations shall have effect subject to any such modifications as may appear to His Majesty to be necessary for securing that the case of any such person shall not be dealt with in any manner less favourable to him than it would have been dealt with if this Act had not been passed and he had continued to serve on the establishment of the Secretary of State in Council.

(4) All persons who, not being on the permanent establishment of the Secretary of State in Council, were immediately before the commencement of Part III of this Act officers or servants employed in the United Kingdom by the Secretary of State in Council shall on that date be transferred to the department of the Secretary of State and, for the purposes of the



Superannuation Acts, 1834 to 1935, and the orders, rules and regulations made thereunder, employment by the Secretary of State in Council shall be treated as if it had been employment by the Secretary of State.

(5) If the conditions of service of any person to whom the last preceding subsection applies included a condition as to eligibility for a retiring allowance in consideration of meritorious service, the Treasury may, if they think fit, grant to him such an allowance on his retirement.

(6) Notwithstanding anything in the Pensions Commutation Acts, 1877 to 1882, it shall be lawful for the Treasury to commute for a capital sum so much of any superannuation, compensation or retiring allowance as is payable out of moneys provided by Parliament to a person so transferred as aforesaid and for the Secretary of State so to commute so much of any such allowance as is payable to such a person out of the revenues of the Federation.

Any such commutation shall be made upon such conditions as His Majesty in Council may direct, not being more favourable than the conditions which would have applied to the person in question if he had retired from the establishment of the Secretary of State in Council.

Contributions from revenues of Federation.

**282.** (1) So much of any superannuation allowances, compensation allowances, retiring allowances, additional allowances or gratuities which may become payable to or in respect of officers and servants transferred by the last preceding section to the department of the Secretary of State as His Majesty in Council may determine to represent the proportion of such allowances or gratuities attributable to service before the date of transfer shall be paid out of the revenues of the Federation :

Provided that account shall not be taken of any service before the date of transfer in respect of which such an allowance or gratuity payable out of moneys provided by Parliament might, if this Act had not been passed, have been awarded under the Superannuation Acts, 1834 to 1935.

(2) If any officer or servant so transferred to the department of the Secretary of State, or any person who, having been previously on the establishment of the Secretary of State in Council, was immediately before the commencement of Part III of this Act a member of the staff of the High Commissioner for India, or any person who immediately before the commencement of Part III of this Act was the Auditor of the Accounts of the Secretary of State in Council or a member of his staff, loses his employment by reason of the abolition of his office or post, or by reason of any reorganisation of the department or of his office, where such abolition or reorganisation results in the opinion of the Secretary of State from the operation of this Act or the Government of Burma Act, 1935, the Secretary of State shall award to that officer or servant out of the revenues of the Federation such compensation as he may think just and equitable in augmentation of any allowance or gratuity for which that officer or servant may be otherwise eligible.

(3) Any payments directed by this section to be made out of the revenues of the Federation shall be charged upon those revenues.

**283.** (1) The liability for payment of any superannuation allowances, compensation allowances, retiring allowances, additional allowances and gratuities which immediately before the commencement of Part III of this Act were payable to or in respect of persons in respect of service on the establishment of the Secretary of State in Council, or in respect of service as Auditor of the Accounts of the Secretary of State in Council, or in respect of service as a member of that Auditor's staff, or partly in respect of service on the establishment of the Secretary of State in Council or as a member of that Auditor's staff and partly in respect of service as a member of the staff of the High Commissioner for India shall be a liability of the Government of the Federation, and those allowances and gratuities shall be charged upon the revenues of the Federation.

*Liability for pensions in respect of service before commencement of Part III.*

(2) The provisions of subsection (1) of this section shall also apply to so much of any superannuation allowances, compensation allowances, retiring allowances, additional allowances, and gratuities awarded after the commencement of Part III of this Act to persons not transferred by the last but one preceding section as is attributable to such service before the commencement of Part III of this Act as is mentioned in the said subsection (1).

**284.** Any sums which, if this Act had not been passed, would have been payable, whether as of right or not, by the Secretary of State in Council out of the revenues of India to or in respect of a person who was a subscriber to the Regular Widows' Fund, the Elders Widows' Fund, or the India Office Provident Fund, shall be paid out of the revenues of the Federation and charged on those revenues.

*Provision as to certain India Office provident funds.*

## PART XII.<sup>1</sup>

### MISCELLANEOUS AND GENERAL.

#### *The Crown and the Indian States.*

**285.** Subject in the case of a Federated State to the provisions of the Instrument of Accession of that State, nothing in this Act affects the rights and obligations of the Crown in relation to any Indian State.

*Saving for rights and obligations of the Crown in its relations with Indian States. Use of His Majesty's forces in connection with discharge of the functions of the Crown in its relations with Indian States.*

**286.** (1) If His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States requests the assistance of armed forces for the due discharge of those functions, it shall be the duty of the Governor General in the exercise of the executive authority of the Federation to cause the necessary forces to be employed accordingly, but the net additional expense, if any, incurred in connection with those forces by reason of that employment shall be deemed to be expenses of His Majesty incurred in discharging the said functions of the Crown.

<sup>1</sup> Part XII came into force on the 1st April, 1937, see the Government of India (Commencement and Transitory Provisions) Order, 1936, para. 3.

(2) In discharging his functions under this section the Governor-General shall act in his discretion.

Arrange-  
ments for  
Governors  
and Provin-  
cial staff to  
assist in  
discharging  
functions of  
Political  
Department.

**287.** Arrangements may be made between His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States and the Governor of any Province for the discharge by the Governor and officers serving in connection with the affairs of the Province of powers and duties in connection with the exercise of the said functions of the Crown.

*Aden.*

*Aden.*

**288.** (1) On such date<sup>1</sup> as His Majesty may by Order in Council appoint (in this section referred to as "the appointed day") the then existing Chief Commissioner's Province of Aden (in this section referred to as "Aden") shall cease to be a part of British India.

(2) At any time after the passing of this Act it shall be lawful for His Majesty in Council to make such provision as he deems proper for the government of Aden after the appointed day, and any such Order in Council may delegate to any person or persons within Aden power to make laws for the peace, order and good government of Aden, without prejudice to the power of His Majesty in Council, notwithstanding such delegation, from time to time to make laws for any of the purposes aforesaid.

(3) An Order made by His Majesty in Council by virtue of the preceding subsection may, without prejudice to the generality of the words of that subsection, contain provisions with respect to—

- (a) the continuing validity of all Acts, orders, ordinances and regulations in force in Aden immediately before the appointed day ;
- (b) the continuing validity of lawful acts done by any authority in Aden, before the appointed day ;
- (c) the validity and continuance of proceedings commenced before the appointed day in any Court of Justice in, or having jurisdiction in, Aden ; and
- (d) the enforcement by or against the Government of Aden of claims which, if this Act had not been passed, might have been enforced by or against the Secretary of State in Council in connection with the administration of Aden.

(4) If any such Order is made, it shall confer appellate jurisdiction from courts in Aden upon such court in India as may be specified in the Order, and it shall be the duty of any court in India upon which jurisdiction is so conferred to exercise that jurisdiction, and such contribution, if any, as His Majesty in Council may determine shall be paid out of the revenues of Aden towards the expenses of that court.

The Order shall also make provision specifying the cases in which an appeal from that court in India may be brought to His Majesty in Council.

<sup>1</sup> The 1st day of April, 1937, *see* para. 3 of the Aden Colony Order, 1936, *Gazette of India*, 1936, Part I, p. 1479.

(5) Any property which immediately before the separation of Aden from India was vested in His Majesty for the purposes of the Government of India and either was then situate in Aden, or, by virtue of any delegation from the Secretary of State in Council or otherwise, was then in the possession, or under the control of, or held on account of, the Local Government of Aden, shall, as from the said separation, vest in His Majesty for the purposes of the Government of Aden, and any contract made or liability incurred by or on behalf of the Secretary of State in Council before the said separation solely for a purpose which will after the separation be a purpose of the Government of Aden shall, as from the separation, have effect as if it had been made or incurred by or on behalf of the Government of Aden.

*New Provinces and alterations of boundaries of Provinces.*

**289.** (1) As from such date<sup>1</sup> as His Majesty may by Order in Council appoint—

Creation of  
new Pro-  
vinces of  
Sind and  
Orissa.

- (a) Sind shall be separated from the Presidency of Bombay and shall form a Governor's Province to be known as the Province of Sind ;
- (b) Orissa and such other areas in the Province of Bihar and Orissa as may be specified in the Order of His Majesty shall be separated from that Province, and such areas as may be specified in the said Order shall be separated from the Presidency of Madras and the Central Provinces respectively, and Orissa and the other areas so separated shall together form a Governor's Province to be known as the Province of Orissa ; and
- (c) the Province formerly known as Bihar and Orissa shall be known as the Province of Bihar.

(2) An Order in Council made under this section shall define the boundaries of the Provinces of Sind and Orissa and may contain—

- (a) such provisions for their government and administration during the period before Part III of this Act comes into operation ;
- (b) such provisions for varying during the said period the composition of the Local Legislature of any Presidency or Province the boundaries of which are altered under this section ;
- (c) such provisions with respect to the laws which, subject to amendment or repeal by the Provincial or, as the case may be, the Federal Legislature, are to be in force in, or in any part of, Sind or Orissa respectively ;
- (d) in the case of Orissa, such provisions with respect to the jurisdiction therein of any court theretofore exercising the jurisdiction of a High Court, either generally or for any particular purpose, in any area to be included in the Province ;

<sup>1</sup> The 1st day of April, 1936, both as regards Sind and Orissa. As to Sind, see para. 4 of the Government of India (Constitution of Sind) Order, 1936, and as to Orissa, para. 4 of the Government of India (Constitution of Orissa) Order, 1936, Gazette of India, 1936, Part I, pp. 364 and 349, respectively.

(e) such provisions with respect to apportionments and adjustments of and in respect of assets and liabilities ; and

(f) such supplemental, incidental and consequential provisions,

as His Majesty may deem necessary or proper.

(3) Subject to the provisions of any such Order as aforesaid, the Governor-General in Council may, until the date on which Part III of this Act comes into operation, exercise in relation to the Provinces of Sind and Orissa and any Presidency or Province the boundaries of which are altered under this section any powers which he might have exercised if the said new Provinces had been constituted, or those boundaries had been altered, under the provisions in that behalf contained in the Government of India Act.

(4) In this Act the expression “ the Legislative Council of the Province ” when used in relation to a date before the commencement of Part III of this Act shall in the case of Sind and Orissa be deemed to refer to the Legislative Councils of Bombay and of Bihar or Bihar and Orissa respectively.

**290.** (1) Subject to the provisions of this section, His Majesty may by Order in Council—

(a) create a new Province ;

(b) increase the area of any Province ;

(c) diminish the area of any Province ;

(d) alter the boundaries of any Province :

Provided that, before the draft of any such Order is laid before Parliament, the Secretary of State shall take such steps as His Majesty may direct for ascertaining the views of the Federal Government and the Chambers of the Federal Legislature and the views of the Government and the Chamber or Chambers of the Legislature of any Province which will be affected by the Order, both with respect to the proposal to make the Order and with respect to the provisions to be inserted therein.

(2) An Order made under this section may contain such provisions for varying the representation in the Federal Legislature of any Governor's Province the boundaries of which are altered by the Order and for varying the composition of the Legislature of any such Province, such provisions with respect to apportionments and adjustments of and in respect of assets and liabilities, and such other supplemental, incidental and consequential provisions as His Majesty may deem necessary or proper :

Provided that no such Order shall vary the total membership of either Chamber of the Federal Legislature.

(3) In this section the expression “ Province ” means either a Governor's Province or a Chief Commissioner's Province.

#### *Franchise.*

Power of His  
Majesty to  
make provi-

**291.** In so far as provision with respect to the matters hereinafter mentioned is not made by this Act, His Majesty in Council may from time to

Creation  
of new  
Provinces  
and altera-  
tions of  
boundaries  
of Provinces.

time make provision with respect to those matters or any of them, that is to say—

- (a) the delimitation of territorial constituencies for the purpose of elections under this Act ;
- (b) the qualifications entitling persons to vote in territorial or other constituencies at such elections, and the preparation of electoral rolls ;
- (c) the qualifications for being elected at such elections as a member of a legislative body ;
- (d) the filling of casual vacancies in any such body ;
- (e) the conduct of elections under this Act and the methods of voting thereat ;
- (f) the expenses of candidates at such elections ;
- (g) corrupt practices and other offences at or in connection with such elections ;
- (h) the decision of doubts and disputes arising out of, or in connection with, such elections ;
- (i) matters ancillary to any such matter as aforesaid.

sion with respect to franchises and elections.

*Provisions as to certain legal matters.*

**292.<sup>1</sup>** Notwithstanding the repeal by this Act of the Government of India Act, but subject to the other provisions of this Act, all the law in force in British India immediately before the commencement of Part III of this Act shall continue in force in British India until altered or repealed or amended by a competent Legislature or other competent authority.

Existing law of India to continue in force.

**293.<sup>1</sup>** His Majesty may by Order in Council to be made at any time after the passing of this Act provide that, as from such date as may be specified in the Order, any law in force in British India or in any part of British India shall, until repealed or amended by a competent Legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Act and, in particular, into accord with the provisions thereof which reconstitute under different names governments and authorities in India and prescribe the distribution of legislative and executive powers between the Federation and the Provinces.

Adaptation of existing Indian laws, etc.

Provided that no such law as aforesaid shall be made applicable to any Federated State by an Order in Council made under this section.

In this section the expression "law" does not include an Act of Parliament, but includes any ordinance, order, byelaw, rule or regulation having in British India the force of law.

<sup>1</sup> For explanation of the scope of ss. 292 and 293, see the India and Burma (Existing Laws) Act, 1937 (1 Edw. 8 and 1 Geo. 6, c. 9).

Foreign  
jurisdiction.

**294.** (1) Neither the executive authority of the Federation nor the legislative power of the Federal Legislature shall extend to any area in a Federated State which His Majesty in signifying his acceptance of the Instrument of Accession of that State may declare to be an area theretofore administered by or on behalf of His Majesty to which it is expedient that the provisions of this subsection should apply, and references in this Act to a Federated State shall not be construed as including references to any such area :

Provided that—

- (a) a declaration shall not be made under this subsection with respect to any area unless, before the execution by the Ruler of the Instrument of Accession, notice has been given to him of His Majesty's intention to make that declaration ;
- (b) if His Majesty with the assent of the Ruler of the State relinquishes his powers and jurisdiction in relation to any such area or any part of any such area, the foregoing provisions of this subsection shall cease to apply to that area or part, and the executive authority of the Federation and the legislative power of the Federal Legislature shall extend thereto in respect of such matters and subject to such limitations as may be specified in a supplementary Instrument of Accession for the State.

Nothing in this subsection applies to any area if it appears to His Majesty that jurisdiction to administer the area was granted to him solely in connection with a railway.

(2) Subject as aforesaid and to the following provisions of this section, if, after the accession of a State becomes effective, power or jurisdiction therein with respect to any matter is, by virtue of the Instrument of Accession of the State, exercisable, either generally or subject to limits, by the Federation, the Federal Legislature, the Federal Court, the Federal Railway Authority, or a Court or an authority exercising the power or jurisdiction by virtue of an Act of the Federal Legislature, or is, by virtue of an agreement made under Part VI of this Act in relation to the administration of a law of the Federal Legislature, exercisable, either generally or subject to limits, by the Ruler or his officers, then any power or jurisdiction formerly exercisable on His Majesty's behalf in that State, whether by virtue of the Foreign Jurisdiction Act, 1890<sup>1</sup>, or otherwise, shall not be exercisable in that State with respect to that matter or, as the case may be, with respect to that matter within those limits. 53 & 54 Vict. c. 37.

(3) So much of any law as by virtue of any power exercised by or on behalf of His Majesty to make laws in a State is in force in a Federated State immediately before the accession of the State becomes effective and might by virtue of the Instrument of Accession of the State be re-enacted for that State by the Federal Legislature, shall continue in force and be deemed for the purposes of this Act to be a Federal law so re-enacted :

Provided that any such law may be repealed or amended by Act of the Federal Legislature and unless continued in force by such an Act shall cease

<sup>1</sup>See Vol. II of this publication.

to have effect on the expiration of five years from the date when the accession of the State becomes effective.

(4) Subject as aforesaid, the powers and jurisdiction exercisable by or on behalf of His Majesty before the commencement of Part III of this Act in Indian States shall continue to be exercisable, and any Order in Council with respect to the said powers or jurisdiction made under the Foreign Jurisdiction Act, 1890<sup>1</sup>, or otherwise, and all delegations, rules and orders made under any such Order, shall continue to be of full force and effect until the Order is amended or revoked by a subsequent Order :

Provided that nothing in this subsection shall be construed as prohibiting His Majesty from relinquishing any power or jurisdiction in any Indian State.

(5) An Order in Council made by virtue and in exercise of the powers by the Foreign Jurisdiction Act, 1890<sup>1</sup>, or otherwise in His Majesty vested, empowering any person to make rules and orders in respect of courts or administrative authorities acting for any territory shall not be invalid by reason only that it confers, or delegates powers to confer, on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers, or delegates power to confer, appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory.

(6) In the Foreign Jurisdiction Act, 1890<sup>1</sup>, the expression " a British court in a foreign country " shall, in relation to any part of India outside British India, include any person duly exercising on behalf of His Majesty any jurisdiction, civil or criminal, original or appellate, whether by virtue of an Order in Council or not, and for the purposes of section nine of that Act the Federal Court shall, as respects appellate jurisdiction in cases tried by a British Court in a Federated State, be deemed to be a Court held in a British Possession or under the authority of His Majesty.

(7) Nothing in this Act shall be construed as limiting any right of His Majesty to determine by what courts British subjects and subjects of foreign countries shall be tried in respect of offences committed in Indian States.

(8) Nothing in this section affects the provisions of this Act with respect to Berar.

**295.** (1) Where any person has been sentenced to death in a Province, the Governor-General in his discretion shall have all such powers of suspension, remission or commutation of sentence as were vested in the Governor-General in Council immediately before the commencement of Part III of this Act, but save as aforesaid no authority in India outside a Province shall have any power to suspend, remit or commute the sentence of any person convicted in the Province :

*Provisions  
as to death  
sentences.*

Provided that nothing in this subsection affects any power of any officer of His Majesty's forces to suspend, remit or commute a sentence passed by a court martial.

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<sup>1</sup>See Vol. II of this publication.



(2) Nothing in this Act shall derogate from the right of His Majesty, or of the Governor-General, if any such right is delegated to him by His Majesty, to grant pardons, reprieves, respites or remissions of punishment.

Courts of  
Appeal in  
revenue  
matters.

**296.** (1) No member of the Federal or a Provincial Legislature shall be a member of any tribunal in British India having jurisdiction to entertain appeals or revise decisions in revenue cases.

(2) If in any Province any such jurisdiction as aforesaid was, immediately before the commencement of Part III of this Act, vested in the Local Government, the Governor shall constitute a tribunal, consisting of such person or persons as he, exercising his individual judgment, may think fit, to exercise the same jurisdiction until other provision in that behalf is made by Act of the Provincial Legislature.

(3) There shall be paid to the members of any tribunal constituted under the last preceding subsection, such salaries and allowances as the Governor exercising his individual judgment may determine, and those salaries and allowances shall be charged on the revenues of the Province.

Prohibition  
of certain  
restrictions  
on internal  
trade.

**297.** (1) No Provincial Legislature or Government shall—

(a) by virtue of the entry in the Provincial Legislative List relating to trade and commerce within the Province, or the entry in that list relating to the production, supply, and distribution of commodities, have power to pass any law or take any executive action prohibiting or restricting the entry into, or export from, the Province of goods of any class or description ; or

(b) by virtue of anything in this Act have power to impose any tax, cess, toll, or due which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the Province, discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality.

(2) Any law passed in contravention of this section shall, to the extent of the contravention, be invalid.

Persons  
not to be  
subjected to  
disability by  
reasons of  
race, religion,  
etc.

**298.** (1) No subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in India, or be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in British India.

(2) Nothing in this section shall affect the operation of any law which—

(a) prohibits, either absolutely or subject to exceptions, the sale or mortgage of agricultural land situate in any particular area, and owned by a person belonging to some class recognised by the law as being a class of persons engaged in or connected with

agriculture in that area, to any person not belonging to any such class ; or

- (b) recognises the existence of some right, privilege or disability attaching to members of a community by virtue of some personal law or custom having the force of law.

(3) Nothing in this section shall be construed as derogating from the special responsibility of the Governor-General or of a Governor for the safeguarding of the legitimate interests of minorities.

**299.** (1) No person shall be deprived of his property in British India save by authority of law. Compulsory acquisition of land, etc.

(2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenues, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(4) Nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act.

(5) In this section "land" includes immovable property of every kind and any rights in or over such property, and "undertaking" includes part of an undertaking.

**300.** (1) The executive authority of the Federation or of a Province shall not be exercised, save on an order of the Governor-General or Governor, as the case may be, in the exercise of his individual judgment, so as to derogate from any grant or confirmation of title of or to land, or of or to any right or privilege in respect of land or land revenue, being a grant or confirmation made before the first day of January, one thousand eight hundred and seventy, or made on or after that date for services rendered. Protection for certain rights, privileges, and pensions.

(2) No pension granted or customarily payable before the commencement of Part III of this Act by the Governor-General in Council or any Local Government on political considerations or compassionate grounds shall be discontinued or reduced, otherwise than in accordance with any grant or order regulating the payment thereof, save on an order of the Governor-General in the exercise of his individual judgment or, as the case may be, of the Governor in the exercise of his individual judgment, and any sum required for the payment of any such pension shall be charged on the revenues of the Federation or, as the case may be, the Province.

(3) Nothing in this section affects any remedy for a breach of any condition on which a grant was made.

**301.** Section eighteen of the East India Company Act, 1780, and section twelve of the East India Act, 1797 (being obsolete enactments containing savings for native law and custom) are hereby repealed.

Repeal of  
s. 18 of 21  
Geo. 3,  
c. 70 and  
s. 12 of 37  
Geo. 3,  
c. 142.

### *High Commissioner.*

High Commissioner  
for India.

**302.** (1) There shall be a High Commissioner for India in the United Kingdom who shall be appointed, and whose salary and conditions of service shall be prescribed, by the Governor-General, exercising his individual judgment.

(2) The High Commissioner shall perform on behalf of the Federation such functions in connection with the business of the Federation, and in particular, in relation to the making of contracts as the Governor-General may from time to time direct.

(3) The High Commissioner may, with the approval of the Governor-General and on such terms as may be agreed, undertake to perform on behalf of a Province or Federated State, or on behalf of Burma, functions similar to those which he performs on behalf of the Federation.

### *General Provisions.*

Provisions  
as to Sheriff  
of Calcutta.

**303.** (1) The Sheriff of Calcutta, shall be appointed annually by the Governor of Bengal from a panel of three persons to be nominated on the occasion of each vacancy by the High Court in Calcutta.

(2) The Sheriff shall hold office during the pleasure of the Governor and shall be entitled to such remuneration as the Governor may determine and no other remuneration.

(3) In exercising his powers with respect to the appointment and dismissal of the Sheriff, and with respect to the determination of his remuneration, the Governor shall exercise his individual judgment.

Persons  
acting as  
Governor-  
General or  
Governor.

**304.** Any person appointed by His Majesty to act as Governor-General or as the Governor of a Province during the absence of the Governor-General or the Governor from India, or during any period during which the Governor-General or the Governor is for any reason unable to perform the duties of his office, shall during, and in respect of, the period while he is so acting have all the powers and immunities, and be subject to all the duties of, the Governor-General or Governor, as the case may be, and, if he holds any other office, shall not act therein or be entitled to the salary and allowances appertaining thereto while he is acting as Governor-General or Governor.

Secretarial  
staffs of  
Governor-  
General and  
Governor.

**305.** (1) The Governor-General and every Governor shall have his own secretarial staff to be appointed by him in his discretion.

(2) The salaries and allowances of persons so appointed and the office accommodation and other facilities to be provided for them shall be such as

the Governor-General or, as the case may be, the Governor may in his discretion determine, and the said salaries and allowances and the expense incurred in providing the said accommodation and facilities shall be charged on the revenues of the Federation or, as the case may be, the Province.

**306.** (1) No proceedings whatsoever shall lie in, and no process whatsoever shall issue from, any court in India against the Governor-General, against the Governor of a Province, or against the Secretary of State, whether in a personal capacity or otherwise, and, except with the sanction of His Majesty in Council, no proceedings whatsoever shall lie in any court in India against any person who has been the Governor-General, the Governor of a Province, or the Secretary of State in respect of anything done or omitted to be done by any of them during his term of office in performance or purported performance of the duties thereof:

Protection of Governor-General, Governor or Secretary of State.

Provided that nothing in this section shall be construed as restricting the right of any person to bring against the Federation, a Province, or the Secretary of State such proceedings as are mentioned in chapter III of Part VII of this Act.

(2) The provisions of the preceding subsection shall apply in relation to His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States as they apply in relation to the Governor-General.

**307.** For the purposes of the first elections of persons to serve as members of the Federal Legislature and of Provincial Legislatures, no person shall be subject to any disqualification by reason only of the fact that he holds—

Removal of certain disqualifications on the occasion of the first elections to Legislature.

(a) an office of profit as a non-official member of the Executive Council of the Governor-General or a Governor, or as a minister in a Province;

(b) an office which is not a whole time office remunerated either by salary or by fees.

**308.** (1) Subject to the provisions of this section, if the Federal Legislature or any Provincial Legislature, on motions proposed in each Chamber by a minister on behalf of the council of ministers, pass a resolution recommending any such amendment of this Act or of an Order in Council made thereunder as is hereinafter mentioned, and on motions proposed in like manner, present to the Governor-General or, as the case may be, to the Governor an address for submission to His Majesty praying that His Majesty may be pleased to communicate the resolution to Parliament, the Secretary of State shall, within six months after the resolution is so communicated, cause to be laid before both Houses of Parliament a statement of any action which it may be proposed to take thereon.

Procedure as respects proposals for amendment of certain provisions of Act and Orders in Council.

The Governor-General or the Governor, as the case may be, when forwarding any such resolution and address to the Secretary of State shall transmit therewith a statement of his opinion as to the proposed amendment and, in particular, as to the effect which it would have on the interests of any minority,

together with a report as to the views of any minority likely to be affected by the proposed amendment and as to whether a majority of the representatives of that minority in the Federal or, as the case may be, the Provincial Legislature support the proposal, and the Secretary of State shall cause such statement and report to be laid before Parliament.

In performing his duties under this subsection the Governor-General or the Governor, as the case may be, shall act in his discretion.

(2) The amendments referred to in the preceding subsection are—

- (a) any amendment of the provisions relating to the size or composition of the Chambers of the Federal Legislature, or to the method of choosing or the qualifications of members of that Legislature, not being an amendment which would vary the proportion between the number of seats in the Council of State and the number of seats in the Federal Assembly, or would vary, either as regards the Council of State or the Federal Assembly, the proportion between the number of seats allotted to British India and the number of seats allotted to Indian States ;
- (b) any amendment of the provisions relating to the number of Chambers in a Provincial Legislature or the size or composition of the Chamber, or of either Chamber, of a Provincial Legislature, or to the method of choosing or the qualifications of members of a Provincial Legislature ;
- (c) any amendment providing that, in the case of women, literacy shall be substituted for any higher educational standard for the time being required as a qualification for the franchise, or providing that women, if duly qualified, shall be entered on electoral rolls without any application being made for the purpose by them or on their behalf ; and
- (d) any other amendment of the provisions relating to the qualifications entitling persons to be registered as voters for the purposes of elections.

(3) So far as regards any such amendment as is mentioned in paragraph (c) of the last preceding subsection, the provisions of subsection (1) of this section shall apply to a resolution of a Provincial Legislature whenever passed, but, save as aforesaid, those provisions shall not apply to any resolution passed before the expiration of ten years, in the case of a resolution of the Federal Legislature, from the establishment of the Federation, and, in the case of a resolution of a Provincial Legislature, from the commencement of Part III of this Act.

(4) His Majesty in Council may at any time before or after the commencement of Part III of this Act, whether the ten years referred to in the last preceding subsection have elapsed or not, and whether any such address as is mentioned in this section has been submitted to His Majesty or not, make

in the provisions of this Act any such amendment as is referred to in subsection (2) of this section :

Provided that—

- (i) if no such address has been submitted to His Majesty, then, before the draft of any Order which it is proposed to submit to His Majesty is laid before Parliament, the Secretary of State shall, unless it appears to him that the proposed amendment is of a minor or drafting nature, take such steps as His Majesty may direct for ascertaining the views of the Governments and Legislatures in India who would be affected by the proposed amendment and the views of any minority likely to be so affected, and whether a majority of the representatives of that minority in the Federal or, as the case may be, the Provincial Legislature support the proposal ;
- (ii) the provisions of Part II of the First Schedule to this Act shall not be amended without the consent of the Ruler of any State which will be affected by the amendment.

**309.** (1) Any power conferred by this Act on His Majesty in Council shall be exercisable only by Order in Council, and subject as hereinafter provided, the Secretary of State shall lay before Parliament the draft of any Order which it is proposed to recommend His Majesty to make in Council under any provision of this Act, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Order may be made either in the form of the draft, or with such amendments as may have been agreed to by resolutions of both Houses :

Orders in  
Council.

Provided that, if at any time when Parliament is dissolved or prorogued, or when both Houses of Parliament are adjourned for more than fourteen days, the Secretary of State is of opinion that on account of urgency an Order in Council should be made under this Act forthwith, it shall not be necessary for a draft of the Order to be laid before Parliament, but the Order shall cease to have effect at the expiration of twenty-eight days from the date on which the Commons House first sits after the making of the Order unless within that period resolutions approving the making of the Order are passed by both Houses of Parliament.

(2) Subject to any express provision of this Act, His Majesty in Council may by a subsequent Order, made in accordance with the provisions of the preceding subsection, revoke or vary any Order previously made by him in Council under this Act.

(3) Nothing in this section applies to any Order of His Majesty in Council made in connection with any appeal to His Majesty in Council, or to any Order of His Majesty in Council sanctioning the taking of proceedings against a person who has been the Governor-General, His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, the Governor of a Province or the Secretary of State.

Power of  
His Majesty  
in Council  
to remove  
difficulties.

**310.** (1) Whereas difficulties may arise in relation to the transition from the provisions of the Government of India Act to the provisions of this Act, and in relation to the transition from the provisions of Part XIII of this Act to the provisions of Part II of this Act :

And whereas the nature of those difficulties, and of the provision which should be made for meeting them, cannot at the date of the passing of this Act be fully foreseen :

Now therefore, for the purpose of facilitating each of the said transitions His Majesty may by Order in Council—

- (a) direct that this Act and any provisions of the Government of India Act still in force shall, during such limited period as may be specified in the Order, have effect subject to such adaptations and modifications as may be so specified ;
- (b) make, with respect to a limited period so specified such temporary provision as he thinks fit for ensuring that, while the transition is being effected and during the period immediately following it, there are available to all governments in India and Burma sufficient revenues to enable the business of those governments to be carried on ; and
- (c) make such other temporary provisions for the purpose of removing any such difficulties as aforesaid as may be specified in the Order.

(2) No Order in Council in relation to the transition from the provisions of Part XIII of this Act to the provisions of Part II of this Act shall be made under this section after the expiration of six months from the establishment of the Federation, and no other Order in Council shall be made under this section after the expiration of six months from the commencement of Part III of this Act.

#### *Interpretation.*

Interpreta-  
tion, etc.

**311.** (1) In this Act and, unless the context otherwise requires, in any other Act the following expressions have the meanings hereby respectively assigned to them, that is to say :—

“ British India ” means all territories for the time being comprised within the Governors’ Provinces and the Chief Commissioners’ Provinces ;

“ India ” means British India together with all territories of any Indian Ruler under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler, the tribal areas, and any other territories which His Majesty in Council may, from time to time, after ascertaining the views of the Federal Government and the Federal Legislature, declare to be part of India ;

“Burma” includes (subject to the exercise by His Majesty of any powers vested in him with respect to the alteration of the boundaries thereof) all territories which were immediately before the commencement of Part III of this Act comprised in India, being territories lying to the east of Bengal, the State of Manipur, Assam, and any tribal areas connected with Assam.

“British Burma” means so much of Burma as belongs to His Majesty ;

“Tribal areas” means the areas along the frontiers of India or in Baluchistan which are not part of British India or of Burma or of any Indian State or of any foreign State ;

“Indian State” includes any territory, whether described as a State, an Estate, a Jagir or otherwise, belonging to or under the suzerainty of a Ruler who is under the suzerainty of His Majesty and not being part of British India ;

“Ruler” in relation to a State means the Prince, Chief or other person recognised by His Majesty as the Ruler of the State.

(2) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :—

“agricultural income” means agricultural income as defined for the purposes of the enactments relating to Indian income tax ;

“borrow” includes the raising of money by the grant of annuities and “loan” shall be construed accordingly ;

“chief justice” includes in relation to a High Court a chief judge or judicial commissioner, and “judge” includes an additional judicial commissioner ;

“corporation tax” means any tax on so much of the income of companies as does not represent agricultural income, being a tax to which the enactments requiring or authorising companies to make deductions in respect of income tax from payments of interest or dividends, or from other payments representing a distribution of profits, have no application ;

“corresponding Province” means in case of doubt such Province as may be determined by His Majesty in Council to be the corresponding Province for the particular purpose in question ;

“debt” includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and “debt charges” shall be construed accordingly ;

“existing Indian law” means any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of Part III of this Act by any legislature, authority or person in any territories for the time being comprised in British India, being a legislature, authority or person having power to make such a law, ordinance, order, bye-law, rule or regulation ;



- “ goods ” includes all materials, commodities, and articles ;
- “ guarantee ” includes any obligation undertaken before the commencement of Part III of this Act to make payments in the event of the profits of an undertaking falling short of a specified amount ;
- “ High Court ” does not, except where it is expressly so provided include a High Court in a Federated State ;
- “ Local Government ” means any such Governor in Council, Governor acting with ministers, Lieutenant-Governor in Council, Lieutenant-Governor or Chief Commissioner as was at the relevant time a Local Government for the purposes of the Government of India Act or any Act repealed by that Act, but does not, save where the context otherwise requires, include any Local Government in Burma or Aden ;
- “ pension ” in relation to persons in or formerly in the service of the Crown in India, Burma or Aden, means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any such person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund ;
- “ pleader ” includes advocate ;
- “ Provincial Act ” and “ Provincial law ” means, subject to the provisions of this section, an Act passed or law made by a Provincial Legislature established under this Act ;
- “ public notification ” means a notification in the Gazette of India or as the case may be, the official Gazette of a Province ;
- “ securities ” includes stock ;
- “ taxation ” includes the imposition of any tax or impost whether general or local or special, and “ tax ” shall be construed accordingly ;
- “ railway ” includes a tramway not wholly within a municipal area ;
- “ federal railway ” does not include an Indian State railway but, save as aforesaid, includes any railway not being a minor railway ;
- “ Indian State railway ” means a railway owned by a State and either operated by the State, or operated on behalf of the State otherwise than in accordance with a contract made with the State by or on behalf of the Secretary of State in Council, the Federal Government, the Federal Railway Authority, or any company operating a federal railway ;
- “ minor railway ” means a railway which is wholly situate in one unit and does not form a continuous line of communication with a federal railway, whether of the same gauge or not ; and
- “ unit ” means a Governor’s Province, a Chief Commissioner’s Province or a Federated State.

(3) No Indian State shall, for the purpose of any reference in this Act to Federated States, be deemed to have become a Federated State until the establishment of the Federation.

52 & 53 Vict.,  
c. 63.

(4) In paragraph (3) of section eighteen of the Interpretation Act, 1889 (which paragraph defines the expression "colony") for the words "exclusive of the British Islands and of British India" there shall be substituted the words "exclusive of the British Islands and of British India and of British Burma."

(5) Any Act of Parliament containing references to India or any part thereof, to countries other than or situate outside India or other than or situate outside British India, to His Majesty's dominions, to a British possession, to the Secretary of State in Council, to the Governor-General in Council, to a Governor in Council or to Legislatures, courts, or authorities in, or to matters relating to the government or administration of, India or British India shall have effect subject to such adaptations and modifications as His Majesty in Council may direct, being adaptations and modifications which appear to His Majesty in Council to be necessary or expedient in consequence of the provisions of this Act or the Government of Burma Act, 1935.

Any power of any legislature under this Act to repeal or amend any Act adapted or modified by an Order in Council under this subsection shall extend to the repeal or amendment of that Order, and any reference in this Act to an Act of Parliament shall be construed as including a reference to any such Order.

(6) Any reference in this Act to Federal Acts or laws or Provincial Acts or laws, or to Acts or laws of the Federal or a Provincial Legislature, shall be construed as including a reference to an ordinance made by the Governor-General or a Governor-General's Act or, as the case may be, to an ordinance made by a Governor or a Governor's Act.

(7) References in this Act to the taking of an oath include references to the making of an affirmation.

## PART XIII.<sup>1</sup>

### TRANSITIONAL PROVISIONS.

**312.** The provisions of this Part of this Act shall apply with respect to the period elapsing between the commencement of Part III of this Act and the establishment of the Federation. Operation of  
Part XIII.

**313.** (1) Subject to the provisions of this Act for the time being in force, such executive authority as is hereinafter mentioned shall be exercised on behalf of His Majesty by the Governor-General in Council, either directly or through officers subordinate to him, but nothing in this section shall prevent Executive  
Government.

<sup>1</sup> Part XIII came into force on the 1st April, 1937, see the Government of India (Commencement and Transitory Provisions) Order, 1936, para. 3.

the Indian Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor-General in Council any functions conferred by any existing Indian law on any court, judge or officer, or on any local or other authority.

(2) Subject to the provisions of this Act for the time being in force, the said executive authority extends—

- (a) to the matters with respect to which the Indian Legislature has, under the said provisions, power to make laws ;
- (b) to the raising in British India on behalf of His Majesty of naval, military or air forces, and to the governance of His Majesty's forces borne on the Indian establishment ;
- (c) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance or otherwise in and in relation to the tribal areas :

Provided that—

- (i) the said authority does not, save as expressly provided in the provisions of this Act for the time being in force, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws ;
- (ii) the said authority does not extend to the enlistment or enrolment in any force raised in British India of any person unless he is either a subject of His Majesty, or a native of India or of territories adjacent thereto ; and
- (iii) commissions in any such forces shall be granted by His Majesty, save in so far as he may be pleased to delegate that power by virtue of the provisions of Part I of this Act or otherwise.

(3) References in the provisions of this Act for the time being in force to the Governor-General and the Federal Government shall, except as respects matters with respect to which the Governor-General is required by the said provisions to act in his discretion, be construed as references to the Governor-General in Council, and any reference to the Federation, except where the reference is to the establishment of the Federation, shall be construed as a reference to British India, the Governor-General in Council, or the Governor-General, as the circumstances and the context may require :

Provided that—

- (a) any reference to the revenues of the Federation shall be construed as a reference to the revenues of the Governor-General in Council ;
- (b) the revenues of the Governor-General in Council shall, subject to the provisions of chapter I of Part VII of this Act with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to Provinces and to the provisions of this Act with respect to the Federal Railway Authority (so far

as any such provisions are for the time being in force), include all revenues and public moneys raised or received either by the Governor-General in Council or by the Governor-General ;

- (c) the expenses of the Governor-General in discharging his functions as respects matters with respect to which he is required by the provisions of this Act for the time being in force to act in his discretion shall be defrayed out of the revenues of the Governor-General in Council.

(4) Any requirement in this Act that the Governor-General shall exercise his individual judgment with respect to any matter shall not come into force until the establishment of the Federation, but, notwithstanding that Part II of this Act has not come into operation, the following provisions of this Act, that is to say—

- (a) the provisions requiring the prior sanction of the Governor-General for certain legislative proposals ;
- (b) the provisions relating to broadcasting ;
- (c) the provisions relating to directions to, and principles to be observed by, the Federal Railway Authority ; and
- (d) the provisions relating to civil services to be recruited by the Secretary of State ;

shall have effect in relation to defence, ecclesiastical affairs, external affairs and the tribal areas as they have effect in relation to matters or functions with respect to, or in the exercise of, which the Governor-General is by the provisions of this Act for the time being in force required to act in his discretion, and any reference in any of the provisions of this Act for the time being in force to the special responsibilities of the Governor-General shall be construed as a reference to the special responsibilities which he will have when Part II of this Act comes into operation.

(5) Nothing in this section shall be construed as conferring on the Governor-General in Council any functions connected with the exercise of the functions of the Crown in its relations with Indian States.

**314.** (1) The Governor-General in Council and the Governor-General, both as respects matters with respect to which he is required by or under this Act to act in his discretion and as respects other matters, shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by, the Secretary of State, but the validity of anything done by the Governor-General in Council or the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this subsection.

Control of  
the Secretary of  
State.

(2) The Secretary of State shall not give any direction to the Governor-General in Council with respect to any grant or appropriation of any part of the revenues of the Governor-General in Council except with the concurrence of his advisers.

(3) While this Part of this Act is in operation, the advisers of the Secretary of State shall not be more than twelve, nor less than eight, in number, and, notwithstanding anything in Part XI of this Act with respect to their term of office, on the establishment of the Federation such of the advisers as the Secretary of State may direct shall cease to hold office.

**Sterling  
loans.**

**315.** (1) While this Part of this Act is in operation, no sterling loans shall be contracted by the Governor-General in Council, but in lieu thereof, if provision is made in that behalf by an East India Loans Act of the Parliament of the United Kingdom, the Secretary of State may, within such limits as may be prescribed by the Act, contract such loans on behalf of the Governor-General in Council.

(2) The Secretary of State shall not exercise any such powers of borrowing as are mentioned in this section unless at a meeting of the Secretary of State and his advisers the borrowing has been approved by a majority of the persons present.

(3) There shall be inserted—

(a) in paragraph (d) of subsection (1) of section one of the Trustee Act, 1925, after the words “on the revenues of India”; and

(b) at the end of sub-paragraph (9) of paragraph (a) of section ten of the Trusts (Scotland) Act, 1921,

the words “or in any sterling loans raised by the Secretary of State on behalf of the Governor-General of India in Council under the provisions of Part XIII of the Government of India Act, 1935.”

(4) No deduction in respect of taxes imposed by or under any existing Indian law or any law of the Indian, the Federal, or a Provincial Legislature shall be made, either before or after the establishment of the Federation, from any payment of principal or interest in respect of any loan contracted under this section.

(5) Any legal proceedings in respect of any loan raised under this section may, either before or after the establishment of the Federation, be brought in the United Kingdom against the Secretary of State, but nothing in this section shall be construed as imposing any liability on the Exchequer of the United Kingdom.

**Legislature.**

**316.** The powers conferred by the provisions of this Act for the time being in force on the Federal Legislature, shall be exercisable by the Indian Legislature and accordingly references in those provisions to the Federal Legislature and Federal Laws shall be construed as references to the Indian Legislature and laws of the Indian Legislature, and references in those provisions to Federal taxes shall be construed as references to taxes imposed by laws of the Indian Legislature :

Provided that nothing in this section shall empower the Indian Legislature to impose limits on the power of the Governor-General in Council to borrow money.

**317.** (1) The provisions of the Government of India Act set out with amendments consequential on the provisions of this Act, in the Ninth Schedule to this Act (being certain of the provisions of that Act relating to the Governor-General, the Commander-in-Chief, the Governor-General's Executive Council and the Indian Legislature and provisions supplemental to those provisions) shall, subject to those amendments, continue to have effect notwithstanding the repeal of that Act by this Act :

*Continuance of certain provisions of Government of India Act.*

Provided that nothing in the said provisions shall affect the provisions of the last but one preceding section.

(2) In the said provisions, the expression " this Act " means the said provisions.

(3) The substitution in the said provisions of references to the Secretary of State for references to the Secretary of State in Council shall not render invalid anything done thereunder by the Secretary of State in Council before the commencement of Part III of this Act.

**318.** (1) Notwithstanding that the Federation has not yet been established, the Federal Court and the Federal Public Service Commission and the Federal Railway Authority shall come into existence and be known by those names, and shall perform in relation to British India the like functions as they are by or under this Act to perform in relation to the Federation when established.

*Provisions as to Federal Court and certain other Federal authorities.*

(2) Nothing in this section affects any power of His Majesty in Council to fix a date later than the commencement of Part III of this Act for the coming into operation, either generally or for particular purposes, of any of the provisions of this Act relating to the Federal Court, the Federal Public Service Commission or the Federal Railway Authority.

**319.** (1) Any rights acquired by, or liabilities incurred by or on behalf of, the Governor-General in Council or the Governor-General between the commencement of Part III of this Act and the establishment of the Federation shall, after the establishment of the Federation, be rights and liabilities of the Federation, and any legal proceedings pending at the establishment of the Federation by or against the Governor-General in Council or the Governor-General shall, after the establishment of the Federation, be continued by or against the Federation.

*Rights and liabilities of Governor-General in Council and Governor-General to continue after establishment of Federation.*

(2) The provisions of subsection (1) of this section shall apply in relation to rights and liabilities of the Secretary of State in Council which have, by virtue of the provisions of this Act, become rights or liabilities of the Governor-General in Council as they apply in relation to the rights and liabilities therein mentioned.

## PART XIV.

### COMMENCEMENT, REPEALS, ETC.

**320.** (1) Part II of this Act shall come into force on such date as His Majesty may appoint by the Proclamation establishing the Federation and the date so appointed is the date referred to in this Act as the date of the establishment of the Federation.

*His Commencement.*

(2) The remainder of this Act shall, subject to any express provision to the contrary, come into force on such date<sup>1</sup> as His Majesty in Council may appoint and the said date is the date referred to in this Act as the commencement of Part III of this Act.

(3) If it appears to His Majesty in Council that it will not be practicable or convenient that all the provisions of this Act which are under the foregoing provisions of this section to come into force on a date therein mentioned should come into operation simultaneously on that date, His Majesty in Council may, notwithstanding anything in this section, fix an earlier or a later date for the coming into operation, either generally or for particular purposes, of any particular provisions of this Act.

Repeals.

**321.** The Government of India Act<sup>2</sup> shall be repealed and the other Acts mentioned in the Tenth Schedule<sup>3</sup> to this Act shall also be repealed to the extent specified in the third column of that Schedule :

Provided that—

(a) nothing in this section shall affect the Preamble to the Government of India Act, 1919<sup>4</sup> ;

(b) without prejudice to any other provisions of this Act, to the provisions of the Government of Burma Act, 1935<sup>5</sup>, and to the provisions of the Interpretation Act, 1889<sup>6</sup>, relating to the effect of repeals, this repeal shall not affect any appointment made under any enactment so repealed to any office, and any such appointment shall have effect as if it were an appointment to the corresponding office under this Act or the Government of Burma Act, 1935.

9 & 10  
Geo. 5,  
c. 101.

## SCHEDULES

### FIRST SCHEDULE.

#### COMPOSITION OF THE FEDERAL LEGISLATURE.

##### PART I.

##### REPRESENTATIVES OF BRITISH INDIA.

##### *General Qualification for Membership.*

1. A person shall not be qualified to be chosen as a representative of British India to fill a seat in the Federal Legislature unless he—

(a) is a British subject, or the Ruler or a subject of an Indian State which has acceded to the Federation ; and

<sup>1</sup> Part III and provisions other than those of Parts II and VIII, Chapter I of Part IX, eighth Schedule and s. 232 came into force on the 1st April, 1937, *see* the Government of India (Commencement and Transitory Provisions) Order, 1936, para. 3 ; also *see* paras. 11 and 12, *ibid.* For the provisions of Chapter I of Part IX which have since come into force, *see* footnote on p. 131, *supra*.

<sup>2</sup> Except as regards certain portion of s. 67(2), *see* para. 12 of the Government of India (Commencement and Transitory Provisions) Order, 1936.

<sup>3</sup> Not reprinted.

<sup>4</sup> *See* Vol. III of this publication.

<sup>5</sup> *Infra*.

<sup>6</sup> *See* Vol. II of this publication.

- (b) is, in the case of a seat in the Council of State, not less than thirty years of age and, in the case of a seat in the Federal Assembly, not less than twenty-five years of age ; and
- (c) possesses such, if any, of the other qualifications specified in, or prescribed under, this part of this Schedule as may be appropriate in his case :

Provided that the Ruler or a subject of an Indian State which has not acceded to the Federation—

- (i) shall not be disqualified under sub-paragraph (a) of this paragraph to fill a seat allocated to a Province if he would be eligible to be elected to the Legislative Assembly of that Province ; and
- (ii) in such cases as may be prescribed, shall not be disqualified under the said sub-paragraph (a) to fill a seat allocated to a Chief Commissioner's Province.

2. Upon the expiration of the term for which he is chosen to serve as a member of the Federal Legislature, a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term.

#### *The Council of State.*

3. Of the one hundred and fifty-six seats in the Council of State to be filled by representatives of British India one hundred and fifty seats shall be allocated to the Governors' Provinces, the Chief Commissioners' Provinces and the Anglo-Indian, European and Indian Christian communities in the manner shown in division (i) of the relevant Table of Seats appended to this Part of this Schedule, and six seats shall be filled by persons chosen by the Governor-General in his discretion.

4. To each Governor's Province, Chief Commissioner's Province and community specified in the first column of division (i) of the Table there shall be allotted the number of seats specified in the second column opposite to that Province or community, and of the seats so allotted to a Governor's Province or a Chief Commissioner's Province, the number specified in the third column shall be general seats, the number specified in the fourth column shall be seats for representatives of the scheduled castes, the number specified in the fifth column shall be Sikh seats, the number specified in the sixth column shall be Muhammadan seats, and the number specified in the seventh column shall be seats reserved for women.

5. A Governor's Province or a Chief Commissioner's Province, exclusive of any portion thereof which His Majesty in Council may deem unsuitable for inclusion in any constituency or in any constituency of any particular class, shall be divided into territorial constituencies—

- (a) for the election of persons to fill the general seats, if any ;
- (b) for the election of persons to fill the Sikh seats, if any ; and



(c) for the election of persons to fill the Muhammadan seats, if any,

or, if as respects any class of constituency it is so prescribed, may form one territorial constituency.

To each territorial constituency of any class one or more seats of that class shall be assigned.

6. (1) No person shall be entitled to vote at an election to fill a Sikh seat or a Muhammadan seat in the Council of State unless he is a Sikh or a Muhammadan, as the case may be.

(2) No person who is, or is entitled to be, included in the electoral roll for a territorial constituency in any Province for the election of persons to fill a Sikh seat or a Muhammadan seat in the Council of State shall be entitled to vote at an election to fill a general seat therein allotted to that Province.

(3) No Anglo-Indian, European or Indian Christian shall be entitled to vote at an election to fill a general seat in the Council of State.

(4) Subject as aforesaid, the qualifications entitling persons to vote in territorial constituencies at elections of members of the Council of State shall be such as may be prescribed.

7. Nothing in the two last preceding paragraphs shall apply in relation to British Baluchistan, and a person to fill the seat in the Council of State allotted to that Province shall be chosen in such manner as may be prescribed.

8. In any Province to which a seat to be filled by a representative of the scheduled castes is allotted, a person to fill that seat shall be chosen by the members of those castes who hold seats in the Chamber or, as the case may be, either Chamber of the Legislature of that Province.

9. In any Province to which a seat reserved for women is allotted, a woman to fill that seat shall be chosen by the persons, whether men or women, who hold seats in the Chamber or, as the case may be, the Chambers of the Legislature of that Province.

10. Persons to fill the seats allotted to the Anglo-Indian, European and Indian Christian communities shall be chosen by the members of Electoral Colleges consisting of such Anglo-Indians, Europeans and Indian Christians as the case may be, as are members of the Legislative Council of any Governor's Province or of the Legislative Assembly of any Governor's Province.

The Rules regulating the conduct of elections by the European Electoral College shall be such as to secure that on any occasion where more than one seat falls to be filled by the College no two of the seats to be then filled shall be filled by persons who are normally resident in the same Province.

11. A person shall not be qualified to hold a seat in the Council of State unless—

(a) in the case of a seat allotted to a Governor's Province or a Chief Commissioner's Province, he is qualified to vote in a territorial constituency in the Province at an election of a member of the

Council of State, or, in the case of a seat allotted to British Baluchistan, possesses such qualifications as may be prescribed ;

- (b) in the case of a seat allotted to the Anglo-Indian, the European or the Indian Christian community, he possesses such qualifications as may be prescribed.

12. Subject to the provisions of the four next succeeding paragraphs, the term of office of a member of the Council of State shall be nine years :

Provided that a person chosen to fill a casual vacancy shall be chosen to serve only for the remainder of his predecessor's term of office.

13. Upon the first constitution of the Council of State persons shall be chosen to fill all the seats allotted to Governors' Provinces, Chief Commissioners' Provinces and communities, but, for the purpose of securing that in every third year one-third of the holders of such seats shall retire, one-third of the persons first chosen shall be chosen to serve for three years only, one-third shall be chosen to serve for six years only and one-third shall be chosen to serve for nine years, and thereafter in every third year persons shall be chosen to fill for nine years the seats then becoming vacant in consequence of the provisions of this paragraph.

14. In the case of a Province specified in column one in division (ii) of the Table of Seats, the numbers specified as respects seats of different classes in columns two to six, in columns seven to eleven and in columns twelve to sixteen respectively shall be the numbers of the seats of the different classes to be filled upon the first constitution of the Council by members chosen to serve for three years only, by members chosen to serve for six years only, and by members chosen to serve for nine years.

15. The person chosen upon the first constitution of the Council to fill the Anglo-Indian seat shall be chosen to serve for nine years ; of the seven persons then chosen to fill the European seats, three shall be chosen to serve for three years only, one shall be chosen to serve for six years only and three shall be chosen to serve for nine years ; and of the two persons then chosen to fill the Indian Christian seats, one shall be chosen to serve for three years only and one shall be chosen to serve for nine years.

16. Upon the first constitution of the Council of State two of the persons to be chosen by the Governor-General shall be chosen to serve for three years only, two shall be chosen to serve for six years only and two shall be chosen to serve for nine years.

#### *The Federal Assembly.*

17. The allocation of seats in the Federal Assembly, other than seats allotted to Indian States, shall be as shown in the relevant Table of Seats appended to this Part of this Schedule.

18. To each Governor's Province and Chief Commissioner's Province specified in the first column of the Table there shall be allotted the number

of seats specified in the second column opposite to that Province, and of those seats—

- (i) the number specified in the third column shall be general seats, of which the number specified in the fourth column shall be reserved for members of the scheduled castes ;
- (ii) the numbers specified in the next eight columns shall be the numbers of seats to be filled respectively by persons chosen to represent
  - (a) the Sikh community ; (b) the Muhammadan community ;
  - (c) the Anglo-Indian community ; (d) the European community ;
  - (e) the Indian Christian community ; (f) the interests of commerce and industry ; (g) landholders ; and (h) the interests of labour ;
 and
- (iii) the number specified in the thirteenth column shall be the number of seats reserved to women.

There shall also be in the Federal Assembly four seats not allotted to any Province, of which three shall be seats to be filled by representatives of commerce and industry and one shall be a seat to be filled by a representative of labour.

19. Subject to the provisions of the next succeeding paragraph, persons to fill the seats in the Federal Assembly allotted to a Governor's Province as general seats, Sikh seats or Muhammadan seats shall be chosen by electorates consisting of such of the members of the Legislative Assembly of the Province as hold therein general seats, Sikh seats or Muhammadan seats respectively, voting in the case of a general election in accordance with the principle of proportional representation by means of the single transferable vote :

Provided that in the North-West Frontier Province the holders of Sikh seats, and in any Province in which seats are reserved for representatives of backward areas or backward tribes the holders of those seats shall, for the purposes of this paragraph, be deemed to hold general seats.

20. The provisions of this paragraph shall have effect with respect to the general seats reserved in any Governor's Province for members of the scheduled castes :—

For the purposes of a general election of members of the Federal Assembly,—

- (a) there shall be a primary electorate consisting of all persons who were successful candidates at the primary elections held, in accordance with the provisions of the Fifth Schedule to this Act, on the occasion of the last general election of members of the Legislative Assembly of the Province for the purpose of selecting candidates for seats reserved for members of the scheduled castes ;
- (b) the members of the primary electorate so constituted shall be entitled to take part in a primary election held for the purpose of electing four candidates for each seat so reserved ; and

- (c) no person who is not so elected as a candidate shall be qualified to be chosen to fill such a seat.

Rules made under this Part of this Schedule shall make provision as to the manner in which a casual vacancy occurring in a seat to which this paragraph applies is to be filled.

21. For the purpose of choosing persons to fill the women's seats in the Federal Assembly there shall be for British India an electoral college consisting of such women as are members of the Legislative Assembly of any Governor's Province, and the person to fill a woman's seat allotted to any particular Province shall be chosen by the members of the college.

Rules regulating the conduct of elections by the women's electoral college shall be such as to secure that, of the nine women's seats allotted to Provinces, at least two are held by Muhammadans and at least one by an Indian Christian.

22. For the purpose of choosing persons to fill the Anglo-Indian, European and Indian Christian seats in the Federal Assembly, there shall be for British India three electoral colleges consisting respectively of such persons as hold an Anglo-Indian, a European or an Indian Christian seat in the Legislative Assembly of any Governor's Province, and the person to fill an Anglo-Indian, European or Indian Christian seat allotted to any particular Province shall be chosen by the members of the appropriate electoral college.

In choosing at a general election the persons to fill the Indian Christian seats allotted to the Province of Madras, the Indian Christian electoral college shall vote in accordance with the principle of proportional representation by means of the single transferable vote.

23. Persons to fill the seats in the Federal Assembly which are to be filled by representatives of commerce and industry, landholders and representatives of labour shall be chosen—

- (a) in the case of a seat allotted to a Province which is to be filled by a representative of commerce and industry, by such chambers of commerce and similar associations voting in such manner as may be prescribed ;
- (b) in the case of a seat allotted to a Province which is to be filled by a landholder, by such persons voting in such territorial constituencies and in such manner as may be prescribed ;
- (c) in the case of a seat allotted to a Province which is to be filled by a representative of labour, by such organisations, or in such constituencies and in accordance with such manner of voting as may be prescribed ;
- (d) in the case of one of the non-provincial seats which are to be filled by representatives of commerce and industry, by such Associated

Chambers of Commerce, in the case of another such seat by such Federated Chambers of Commerce and in the case of the third such seat by such commercial bodies in Northern India, voting in each case in such manner as may be prescribed ; and

- (e) in the case of the non-provincial seat which is to be filled by a representative of labour, by such organisations voting in such manner as may be prescribed.

24. Persons to fill the seats in the Federal Assembly allotted to Chief Commissioners' Provinces as general seats or Muhammadan seats shall be chosen—

- (a) in the case of Coorg, by the members of the Legislative Council ; and

- (b) in other cases in such manner as may be prescribed.

25. A person shall not be qualified to hold a seat in the Federal Assembly, unless—

- (i) in the case of a general seat, a Sikh seat, a Muhammadan seat, an Anglo-Indian seat, a European seat, an Indian Christian seat or a woman's seat allotted to a Governor's Province or the Province of Coorg, he is qualified to hold a seat of the same class in the Legislative Assembly, or, in the case of Coorg, the Legislative Council, of that Province ;
- (ii) in the case of any other seat, he possesses such qualifications as may be prescribed.

#### *General.*

26. (1) In the foregoing provisions of this Schedule the following expressions have the meanings hereby assigned to them, that is to say :—

“ a European ” means a person whose father or any of whose other male progenitors in the male line is or was of European descent and who is not a native of India ;

“ an Anglo-Indian ” means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is a native of India ;

“ an Indian Christian ” means a person who professes any form of the Christian religion and is not a European or an Anglo-Indian ;

“the scheduled castes” means such castes, races or tribes or parts of or groups within castes, races or tribes, being castes, races, tribes, parts or groups which appear to His Majesty in Council to correspond to the classes of persons formerly known as “the depressed classes”, as His Majesty in Council may specify; and

“prescribed” means prescribed by His Majesty in Council or, so far as regards any matter which under this Act the Federal Legislature or the Governor-General are competent to regulate, prescribed by an Act of that Legislature or by a rule made under the next succeeding paragraph.

(2) In this paragraph the expression “native of India” has the same meaning as it had for the purposes of section six of the Government of India Act, 1870, and accordingly it includes any person born and domiciled within the dominions of His Majesty in India or Burma of parents habitually resident in India or Burma and not established there for temporary purposes only.

33 and 34  
Vict., c. 3.

27. In so far as provision with respect to any matter is not made by this Act or by His Majesty in Council or, after the constitution of the Federal Legislature, by Act of that Legislature (where the matter is one with respect to which that Legislature is competent to make laws), the Governor-General, exercising his individual judgment, may make rules for carrying into effect the foregoing provisions of this part of this Schedule and for securing the due constitution of the Council of State and the Federal Assembly and, in particular, but without prejudice to the generality of the foregoing words, with respect to—

- (i) the notification of vacancies, including casual vacancies and the proceedings to be taken for filling vacancies;
- (ii) the nomination of candidates;
- (iii) the conduct of elections, including the application to elections of the principle of proportional representation by means of the single transferable vote, and the rules to regulate elections where certain of the seats to be filled are to be filled by persons to be chosen to serve for different terms, or are reserved for members of the scheduled castes;
- (iv) the expenses of candidates at elections;
- (v) corrupt practices and other offences at or in connection with elections;
- (vi) the decision of doubts and disputes arising out of or in connection with the choice of persons to fill seats in the Council of State or the Federal Assembly; and
- (vii) the manner in which rules are to be carried into effect.

## TABLE OF SEATS.

*The Council of State.**Representatives of British India.*(i) *Allocation of seats.*

1	2	3	4	5	6	7
Province or Community.	Total seats.	General seats.	Seats for Scheduled Castes.	Sikh seats.	Muham- madan seats.	Women's seats.
Madras . . .	20	14	1	—	4	1
Bombay . . .	16	10	1	—	4	1
Bengal . . .	20	8	1	—	10	1
United Provinces .	20	11	1	—	7	1
Punjab . . .	16	3	—	4	8	1
Bihar . . .	16	10	1	—	4	1
Central Provinces and Berar . . .	8	6	1	—	1	—
Assam . . .	5	3	—	—	2	—
North-West Frontier Province . .	5	1	—	—	4	—
Orissa . . .	5	4	—	—	1	—
Sind . . .	5	2	—	—	3	—
British Baluchistan .	1	—	—	—	1	—
Delhi . . .	1	1	—	—	—	—
Ajmer-Merwara .	1	1	—	—	—	—
Coorg . . .	1	1	—	—	—	—
Anglo-Indians . .	1	—	—	—	—	—
Europeans . .	7	—	—	—	—	—
Indian Christians .	2	—	—	—	—	—
TOTALS .	150	75	6	4	49	6

(ii) *Distribution of seats for purposes of triennial elections.*

1 Province.	Number of seats to be filled originally for three years only.					Number of seats to be filled originally for six years only.					Number of seats to be filled originally for nine years.				
	2 General Seats.	3 Seats for Scheduled castes.	4 Sikh Seats.	5 Muham- madan Seats.	6 Women's Seats.	7 General Seats.	8 Seats for Scheduled castes.	9 Sikh Seats.	10 Muham- madan Seats.	11 Women's Seats.	12 General Seats	13 Seats for Scheduled castes.	14 Sikh Seats.	15 Muham- madan Seats.	16 Women's Seats.
Madras . . . .	—	—	—	—	—	7	—	—	2	1	7	1	—	2	—
Bombay . . . .	5	—	—	2	1	—	—	—	—	—	5	1	—	2	—
Bengal . . . .	4	1	—	5	—	—	—	—	—	—	4	—	—	5	1
United Provinces . .	5	1	—	3	1	6	—	—	4	—	—	—	—	—	—
Punjab . . . .	2	—	2	4	—	1	—	2	4	1	—	—	—	—	—
Bihar . . . .	—	—	—	—	—	5	1	—	2	—	5	—	—	2	1
Central Provinces and Berar.	—	—	—	—	—	6	1	—	1	—	—	—	—	—	—
Assam . . . .	—	—	—	—	—	3	—	—	2	—	—	—	—	—	—
North-West Frontier Pro- vince.	—	—	—	—	—	—	—	—	—	—	1	—	—	4	—
Orissa . . . .	4	—	—	1	—	—	—	—	—	—	—	—	—	—	—
Sind . . . .	2	—	—	3	—	—	—	—	—	—	—	—	—	—	—
British Baluchistan .	—	—	—	—	—	—	—	—	—	—	—	—	—	1	—
Delhi . . . .	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—
Ajmer-Merwara . .	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—
Coorg . . . .	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—
TOTALS . . . .	22	2	2	18	2	23	2	2	15	2	25	2	—	10	2



TABLE OF SEATS.  
The Federal Assembly.  
Representatives of British India.

1	2	3 General Seats :—		4	5	6	7	8	9	10	11	12	13
Provinces.	Total Seats.	Total of General Seats.	General seats reserved for Sche- duled castes.		Sikh Seats.	Muham- madan Seats.	Anglo- Indian Seats.	Euro- pean Seats.	Indian Chris- tian Seats.	Seats for repre- sentatives of com- merce and industry.	Land- holders Seats.	Seats for repre- sentatives of labour.	Women's Seats.
Madras . . . . .	37	19	4	—	8	1	1	1	2	2	1	1	2
Bombay . . . . .	30	13	2	—	6	1	1	1	1	3	1	2	2
Bengal . . . . .	37	10	3	—	17	1	1	1	1	3	1	2	1
United Provinces . . . . .	37	19	3	—	12	1	1	1	1	—	1	1	1
Punjab . . . . .	30	6	1	6	14	—	—	1	1	—	1	—	1
Bihar . . . . .	30	16	2	—	9	—	—	1	1	—	1	1	1
Central Provinces and Berar . . . . .	15	9	2	—	3	—	—	—	—	—	1	1	1
Assam . . . . .	10	4	1	—	3	1	—	1	1	—	—	1	—
North-West Frontier Pro- vince . . . . .	5	1	—	—	4	—	—	—	—	—	—	—	—
Orissa . . . . .	5	4	1	—	1	—	—	—	—	—	—	—	—
Sind . . . . .	5	1	—	—	3	1	—	1	—	—	—	—	—
British Baluchistan . . . . .	1	—	—	—	1	—	—	—	—	—	—	—	—
Delhi . . . . .	2	1	—	—	1	—	—	—	—	—	—	—	—
Ajmer-Merwara . . . . .	1	1	—	—	—	—	—	—	—	—	—	—	—
Coorg . . . . .	1	1	—	—	—	—	—	—	—	—	—	—	—
Non-Provincial Seats . . . . .	4	—	—	—	—	—	—	—	—	3	—	1	—
TOTALS . . . . .	250	105	19	6	82	4	8	8	11	7	10	9	9

## PART II.

## REPRESENTATIVES OF INDIAN STATES.

1. The allocation to Indian States of seats in the Federal Legislature shall be as shown in the Table appended to this Part of this Schedule, hereinafter referred to as the "Table of Seats," and persons to represent Indian States in that Legislature shall be chosen and appointed in accordance with the provisions hereinafter contained.

2. In the case of the Council of State, there shall be allotted to each State or, as the case may be, to each group of States specified in the first column of the Table of Seats, the number of seats specified in the second column of the said Table opposite to that State or to that group of States.

3. In the case of the Federal Assembly there shall be allotted to each State or, as the case may be, to each group of States specified in the third column of the Table of Seats, the number of seats specified in the fourth column of the said Table opposite to that State or to that group of States.

4. A person shall not be qualified to be appointed under this Part of this Schedule to fill a seat in either Chamber of the Federal Legislature unless he—

- (i) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Federation; and
- (ii) is, in the case of a seat in the Council of State, not less than thirty years of age and, in the case of a seat in the Federal Assembly, not less than twenty-five years of age :

Provided that—

- (a) the Governor-General may in his discretion declare as respects any State, the Ruler of which at the date of the establishment of the Federation was by reason of his minority not exercising ruling powers, that sub-paragraph (i) of this paragraph shall not apply to any named subject, or to subjects generally of that State until that State comes under the rule of a Ruler who is of an age to exercise ruling powers; and
- (b) sub-paragraph (ii) of this paragraph shall not apply to a Ruler who is exercising ruling powers.

5. Upon the expiration of the term for which he is appointed to serve as a member of the Federal Legislature, a person, if otherwise duly qualified, shall be eligible to be appointed to serve for a further term.

6. Subject to the special provisions hereinafter contained with respect to the appointment of persons to represent certain States and groups of States comprised in Divisions XVI and XVII of the Table of Seats,—

- (i) the Rulers of States constituting a group of States to which a seat in the Council of State is allotted shall in rotation appoint a person to fill that seat; and

- (ii) the Rulers of the States constituting a group of States to which a seat in the Federal Assembly is allotted shall appoint jointly a person to fill that seat :

Provided that the Rulers of two or more States entitled to appoint in rotation a person to fill a seat in the Council of State allotted to a group of States may by agreement, and with the approval of the Governor-General in his discretion, appoint jointly a person to fill that seat.

7. The period for which a person shall be appointed to fill a seat shall be—

- (i) in the case of a person appointed to fill a seat in the Council of State—

(a) by the Ruler of a State entitled to separate representation, nine years ;

(b) jointly by the Rulers of all the States in a group which have acceded to the Federation, three years ;

(c) by the Ruler of a State appointing in rotation, one year subject, however, to the special provisions of the next succeeding paragraph with respect to certain States therein mentioned ;

(d) jointly by Rulers of some only of the States in a group which have acceded to the Federation, a period equal to the aggregate of the periods for which each of them might in rotation have appointed a person to hold that seat or three years, whichever may be the shorter period ;

(e) in any other manner, three years ; and

- (ii) in the case of a person appointed to fill a seat in the Federal Assembly, until the dissolution of the Assembly :

Provided that—

- (i) a person appointed to fill a seat upon the occurrence of a casual vacancy shall be appointed to fill that seat for the remainder of the period for which his predecessor was appointed ;

- (ii) in the case of first appointments to fill seats in the Council of State the Governor-General in his discretion shall make by order provision for securing that approximately one-third of the persons appointed by Rulers entitled to separate representation shall be appointed to fill seats for three years only, approximately one-third to fill seats for six years only and approximately one-third to fill seats for nine years.

8. The Ruler of a State mentioned in this paragraph when appointing in rotation a person to fill a seat in the Council of State shall, notwithstanding anything in the preceding paragraph, be entitled to appoint that person to fill the seat—

- (a) in the case of the Rulers of Panna and of Mayurbhanj, for two years ;  
and

- (b) in the case of the Ruler of Pudukkottai, for three years.

9. Subject as hereinafter provided, the Rulers of two or more States forming a group to which one seat in either Chamber of the Federal Legislature is allotted shall, in choosing a person to be appointed by them jointly to fill that seat, each have one vote, and in the case of an equality of votes the choice shall be determined by lot or otherwise in such other manner as may be prescribed :

Provided that in choosing a person to be so appointed the Ruler of a State mentioned in sub-paragraph (a) of the preceding paragraph shall be entitled to two votes and the Ruler of the State mentioned in sub-paragraph (b) of that paragraph shall be entitled to three votes.

10. A seat in either Chamber allotted to a single State shall remain unfilled until the Ruler of that State has acceded to the Federation, and a seat in either Chamber which is the only seat therein allotted to a group of States shall remain unfilled until the Rulers of at least one-half of those States have so acceded but, subject as thereafter provided, so long as one-tenth of the seats in either Chamber allotted either to single States or to groups of States remain unfilled by reason of the non-accession of a State or States, whether such non-accession be due to the minority of a Ruler or to any other cause, the persons appointed by the Rulers of States to fill seats in that Chamber may from time to time in the prescribed manner appoint persons, not exceeding one-half of the number of seats so unfilled to be additional members of that Chamber :

Provided that the right to appoint such additional members shall not be exercised after the expiration of twenty years from the establishment of the Federation.

A person appointed under this paragraph as an additional member of either Chamber shall be appointed to fill his seat for a period of one year only.

11. Persons to fill the seats in the Federal Assembly allotted to any group of States mentioned in Division XVI of the Table of Seats as entitled to appoint persons to fill three such seats shall be appointed in the prescribed manner by the Rulers of such of the States in the group as have acceded to the Federation :

Provided that—

- (a) until the Rulers of two of those States have so acceded, all the three seats shall remain unfilled ; and
- (b) until the Rulers of four of those States have so acceded, two of the three seats shall remain unfilled ; and
- (c) until the Rulers of six of those States have so acceded, one of the three seats shall remain unfilled.

Seats in the Federal Assembly remaining unfilled by reason of the provisions of this paragraph shall be treated as seats remaining unfilled for the purposes of the last preceding paragraph.

12. The provisions of this paragraph shall apply with respect to the two seats in the Council of State and the five seats in the Federal Assembly allotted to the States comprised in Division XVII of the Table of Seats :—

- (a) the States in question are such States, being States which on the first day of January, nineteen hundred and thirty-five, were included in the Western India States Agency, the Gujarat States Agency, the Deccan States Agency, the Eastern States Agency, the Central India Agency or the Rajputana Agency or were in political relations with the Government of the Punjab or the Government of Assam, as may be enumerated in rules made by the Governor-General in his discretion ;
- (b) the Governor-General shall, in the rules so made by him, divide the said States into five groups, and of the five seats in the Federal Assembly allotted to those States one shall be deemed to be allotted to each of the groups ;
- (c) a seat in the Federal Assembly allotted to one of the said groups shall remain unfilled until the Rulers of at least one-half of the States in the group have acceded to the Federation, but, save as aforesaid, a person to fill such a seat shall be appointed in the prescribed manner by the Rulers of such of the States in the group as have acceded to the Federation ;
- (d) persons to fill the two seats in the Council of State allotted to the States comprised in the said Division shall be appointed in the prescribed manner by the persons appointed under the preceding sub-paragraph to fill seats in the Federal Assembly :  
Provided that, so long as three of the five seats in the Federal Assembly remain unfilled, one of the two seats in the Council of State shall also remain unfilled ;
- (e) seats in the Federal Assembly or Council of State remaining unfilled by reason of the provisions of this paragraph shall be treated as seats remaining unfilled for the purposes of the last but one preceding paragraph.

<sup>1</sup>[This paragraph shall have effect as if the State of Khaniadhana had been included in the Central India Agency on the first day of January, nineteen-hundred and thirty-five.]

13. His Majesty in Council may by order vary the Table of Seats by transferring any State from one group of States specified in column one or column three of that Table to another group of States specified in the same column, if he deems it expedient so to do—

- (a) with a view to reducing the number of seats which by reason of the non-accession of a State or States would otherwise remain unfilled ; or

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<sup>1</sup> These words were added by the Government of India (Federal Legislature Amendment) Order, 1936.

- (b) with a view to associating in separate groups States whose rulers do, and States whose rulers do not, desire to make appointments jointly instead of in rotation,

and is satisfied that such variation will not adversely affect the rights and interest of any State :

Provided that a State mentioned in paragraph eight of this Part of this Schedule shall not be transferred to another group unless the Ruler of the State has agreed to relinquish the privileges enjoyed by him under the said paragraph and under paragraph nine.

Where an order varying the Table of Seats is made under this paragraph, references (whether express or implied) in the foregoing provisions of this Part of this Schedule to the Table shall be construed as references to the Table as so varied.

14. In so far as provision in that behalf is not made by His Majesty in Council, the Governor-General may in his discretion make rules for carrying into effect the provisions of this Part of this Schedule and in particular, but without prejudice to the generality of the foregoing words, with respect to—

- (a) the times at which and the manner in which appointments are to be made, the order in which Rulers entitled to make appointments in rotation are to make them and the date from which appointments are to take effect ;
- (b) the filling of casual vacancies in seats ;
- (c) the decision of doubts or disputes arising out of or in connection with any appointment ; and
- (d) the manner in which the rules are to be carried into effect.

In this Part of this Schedule the expression “ prescribed ” means prescribed by His Majesty in Council or by rules made under this paragraph.

15. For the purposes of sub-section (2) of section five of this Act—

- (i) if the Rulers of at least one-half of the States included in any group to which one seat in the Council of State is allotted accede to the Federation, the Rulers so acceding shall be reckoned as being entitled together to choose one member of the Council of State ;
- (ii) if, of the Rulers of States included in the groups to be formed out of the States comprised in Division XVII of the Table of Seats, sufficient accede to the Federation to entitle them to appoint one member or two members of the Federal Assembly, the Rulers so acceding shall be reckoned as being entitled together to choose one member of the Council of State and, if sufficient accede to entitle them to appoint three or more members of the Federal Assembly, the Rulers so acceding shall be reckoned as being entitled together to choose two members of the Council of State ; and

- (iii) the population of a State shall be taken to be the population attributed thereto in column five of the Table of Seats or, if it is one of the States comprised in the said Division XVII of the Table, such figure as the Governor-General may in his discretion determine, and the total population of the States shall be taken to be the total population thereof as stated at the end of the Table.

## TABLE OF SEATS.

*The Council of State and the Federal Assembly.**Representatives of Indian States.*

1	2	3	4	5
States and Groups of States.	Number of seats in Council of State.	States and Groups of States.	Number of seats in the Federal Assembly.	Population.
DIVISION I.				
Hyderabad . . .	5	Hyderabad . . .	16	14,436,148
DIVISION II.				
Mysore . . .	3	Mysore . . .	7	6,557,302
DIVISION III.				
Kashmir . . .	3	Kashmir . . .	4	3,646,243
DIVISION IV.				
Gwalior . . .	3	Gwalior . . .	4	3,523,070
DIVISION V.				
Baroda . . .	3	Baroda . . .	3	2,443,007
DIVISION VI.				
Kalat . . .	2	Kalat . . .	1	342,101
DIVISION VII.				
Sikkim . . .	1	Sikkim . . .	—	109,808
DIVISION VIII.				
1. Rampur . . .	1	1. Rampur . . .	1	465,225
2. Benares . . .	1	2. Benares . . .	1	391,272

1	2	3	4	5
States and Groups of States.	Number of seats in Council of State.	States and Groups of States.	Number of seats in the Federal Assembly.	Population.

## DIVISION IX.

1. Travancore . . .	2	1. Travancore . . .	5	5,095,973
2. Cochin . . .	2	2. Cochin . . .	1	1,205,016
3. Pudukkottai . . .	1	3. Pudukkottai . . .	1	400,694
Banganapalle . . .		Banganapalle . . .		39,218
Sandur . . .		Sandur . . .		13,583

## DIVISION X.

1. Udaipur . . .	2	1. Udaipur . . .	2	1,566,910
2. Jaipur . . .	2	2. Jaipur . . .	3	2,631,775
3. Jodhpur . . .	2	3. Jodhpur . . .	2	2,125,982
4. Bikaner . . .	2	4. Bikaner . . .	1	936,218
5. Alwar . . .	1	5. Alwar . . .	1	749,751
6. Kotah . . .	1	6. Kotah . . .	1	685,804
7. Bharatpur . . .	1	7. Bharatpur . . .	1	486,934
8. Tonk . . .	1	8. Tonk . . .	1	317,360
9. Dholpur . . .	1	9. Dholpur . . .	1	254,986
10. Karauli . . .	1	Karauli . . .		140,525
11. Bundi . . .	1	10. Bundi . . .	1	216,722
12. Sirohi . . .	1	11. Sirohi . . .	1	216,528
13. Dungarpur . . .	1	Dungarpur . . .		227,544
14. Banswara . . .	1	Banswara . . .	1	260,670
15. Partabgarh . . .	1	12. Partabgarh . . .		76,539
Jhalawar . . .		Jhalawar . . .	1	107,890
16. Jaisalmer . . .		13. Jaisalmer . . .	1	76,255
Kishengarh . . .	1	Kishengarh . . .		85,744

## DIVISION XI.

1. Indore . . .	2	1. Indore . . .	2	1,325,089
2. Bhopal . . .	2	2. Bhopal . . .	1	729,955
3. Rewa . . .	2	3. Rewa . . .	2	1,587,445
4. Datia . . .	1	4. Datia . . .	1	158,834
5. Orchha . . .	1	Orchha . . .		314,661
6. Dhar . . .	1	5. Dhar . . .	1	243,430
7. Dewas (Senior)	1	Dewas (Senior)		83,321
Dewas (Junior)		Dewas (Junior)		70,513
8. Jaora . . .	1	6. Jaora . . .	1	100,166
Ratlam . . .		Ratlam . . .		107,321
9. Panna . . .	1	7. Panna . . .	1	212,130
Samthar . . .		Samthar . . .		33,307
Ajaigarh . . .		Ajaigarh . . .		85,895
10. Bijawar . . .	1	8. Bijawar . . .	1	115,852
Charkhari . . .		Charkhari . . .		120,351
Chhatarpur . . .		Chhatarpur . . .		161,267
11. Baoni . . .	1	9. Baoni . . .	1	19,132
Nagod . . .		Nagod . . .		74,589
Maihar . . .		Maihar . . .		68,991
Baraundha . . .		Baraundha . . .		16,071
12. Barwani . . .	1	10. Barwani . . .	1	141,110
Ali Rajpur . . .		Ali Rajpur . . .		101,963
Shahpura . . .		Shahpura . . .		54,233
13. Jhabua . . .	1	11. Jhabua . . .	1	145,522
Sailana . . .		Sailana . . .		35,223
Sitamau . . .		Sitamau . . .		28,422



1	2	3	4	5
States and Groups of States.	Number of seats in Council of State.	States and Groups of States.	Number of seats in the Federal Assembly.	Population.

## DIVISION XI—contd.

14. Rajgarh . . . }	1	12. Rajgarh . . . }	1	134,891
Narsingarh . . . }		Narsingarh . . . }		113,873
Khilchipur . . . }		Khilchipur . . . }		45,583

## DIVISION XII.

1. Cutch . . . }	1	1. Cutch . . . }	1	514,307
2. Idar . . . }	1	2. Idar . . . }	1	262,660
3. Nawanagar . . . }	1	3. Nawanagar . . . }	1	409,192
4. Bhavnagar . . . }	1	4. Bhavnagar . . . }	1	500,274
5. Junagadh . . . }	1	5. Junagadh . . . }	1	545,152
6. Rajpipla . . . }	1	6. Rajpipla . . . }	1	206,114
Palanpur . . . }		Palanpur . . . }		264,179
7. Dhrangadhra . . . }	1	7. Dhrangadhra . . . }	1	88,961
Gondal . . . }		Gondal . . . }		203,846
8. Porbandar . . . }	1	8. Porbandar . . . }	1	115,673
Morvi . . . }		Morvi . . . }		113,023
9. Radhanpur . . . }	1	9. Radhanpur . . . }	1	70,530
Wankaner . . . }		Wankaner . . . }		44,259
Palitana . . . }		Palitana . . . }		62,150
10. Cambay . . . }	1	10. Cambay . . . }	1	87,761
Dharampur . . . }		Dharampur . . . }		112,031
Balasinor . . . }		Balasinor . . . }		52,525
11. Baria . . . }	1	11. Baria . . . }	1	159,429
Chhota Udepur . . . }		Chhota Udepur . . . }		144,640
Sant . . . }		Sant . . . }		83,531
Lunawada . . . }		Lunawada . . . }		95,162
12. Bansda . . . }	1	12. Bansda . . . }	1	48,839
Sachin . . . }		Sachin . . . }		22,107
Jawhar . . . }		Jawhar . . . }		57,261
Danta . . . }		Danta . . . }		26,196
13. Dhrol . . . }	1	Dhrol . . . }	1	27,639
Limbdi . . . }		Limbdi . . . }		40,088
Wadhwan . . . }		Wadhwan . . . }		42,602
Rajkot . . . }		Rajkot . . . }		75,540

## DIVISION XIII.

1. Kolhapur . . . }	2	1. Kolhapur . . . }	1	957,137
2. Sangli . . . }	1	2. Sangli . . . }	1	258,442
Savantvadi . . . }		Savantvadi . . . }		230,589
3. Janjira . . . }	1	3. Janjira . . . }	1	110,379
Mudhol . . . }		Mudhol . . . }		62,832
Bhor . . . }		Bhor . . . }		141,546
4. Jamkhandi . . . }	1	4. Jamkhandi . . . }	1	114,270
Miraj (Senior) . . . }		Miraj (Senior) . . . }		93,938
Miraj (Junior) . . . }		Miraj (Junior) . . . }		40,684
Kurundwad . . . }		Kurundwad . . . }		44,204
(Senior) . . . }		(Senior) . . . }		
Kurundwad . . . }		Kurundwad . . . }		39,583
(Junior) . . . }		(Junior) . . . }		
5. Akalkot . . . }	1	5. Akalkot . . . }	1	92,605
Phaltan . . . }		Phaltan . . . }		58,761
Jath . . . }		Jath . . . }		91,099
Aundh . . . }		Aundh . . . }		76,507
Ramdurg . . . }		Ramdurg . . . }		35,454

1	2	3	4	5
States and Groups of States.	Number of seats in Council of State.	States and Groups of States.	Number of seats in the Federal Assembly.	Population.

## DIVISION XIV.

1. Patiala . . .	2	1. Patiala . . .	2	1,623,520
2. Bahawalpur . . .	2	2. Bahawalpur . . .	1	984,612
3. Khairpur . . .	1	3. Khairpur . . .	1	227,183
4. Kapurthala . . .	1	4. Kapurthala . . .	1	316,737
5. Jind . . .	1	5. Jind . . .	1	324,676
6. Nabha . . .	1	6. Nabha . . .	1	287,574
7. Mandi . . .	1	7. Tehri-Garhwal . . .	1	349,573
Bilaspur . . .		8. Mandi . . .	1	207,465
Suket . . .		Bilaspur . . .		100,994
8. Tehri-Garhwal . . .	1	Suket . . .		58,408
Sirmur . . .		9. Sirmur . . .	1	148,568
Chamba . . .		Chamba . . .		146,870
9. Faridkot . . .	1	10. Faridkot . . .	1	164,364
Malerkotla . . .		Malerkotla . . .		83,072
Loharu . . .		Loharu . . .		23,338

## DIVISION XV.

1. Cooch Behar . . .	1	1. Cooch Behar . . .	1	590,886
2. Tripura . . .	1	2. Tripura . . .	1	382,450
Manipur . . .		3. Manipur . . .	1	445,606

## DIVISION XVI.

1. Mayurbhanj . . .	1	1. Mayurbhanj . . .	1	889,603
Sonepur . . .	1	2. Sonepur . . .	1	237,920
2. Patna . . .		3. Patna . . .	1	566,924
Kalahandi . . .		4. Kalahandi . . .	1	513,716
3. Keonjhar . . .	1	5. Keonjhar . . .	1	460,609
Dhenkanal . . .		6. Gangpur . . .	1	356,674
Nayagarh . . .		7. Bastar . . .	1	521,721
Talcher . . .		8. Surguja . . .	1	501,939
Nilgiri . . .	1	9. Dhenkanal . . .	3	284,326
4. Gangpur . . .		Nayagarh . . .		142,406
Bamra . . .		Seraikela . . .		143,525
Seraikela . . .		Baud . . .		135,248
Baud . . .	1	Talcher . . .	3	69,702
Bonai . . .		Bonai . . .		80,186
5. Bastar . . .		Nilgiri . . .		68,594
Surguja . . .	1	Bamra . . .		151,047
Raigarh . . .		10. Raigarh . . .	3	277,569
Nandgaon . . .		Khairagarh . . .		157,400
6. Khairagarh . . .	1	Jashpur . . .		193,698
Jashpur . . .		Kanker . . .		136,101
Kanker . . .		Sarangarh . . .		128,967
Korea . . .		Korea . . .		90,886
Sarangarh . . .		Nandgaon . . .		182,380

1	2	3	4	5
States and Groups of States.	Number of seats in Council of State.	States and Groups of States.	Number of seats in the Federal Assembly.	Population.
DIVISION XVII.				
States not mentioned in any of the preceding Divisions, but described in paragraph 12 of this Part of this Schedule.	2	States not mentioned in any of the preceding Divisions, but described in paragraph 12 of this Schedule.	5	<sup>1</sup> [3,047,129]
Total population of the States in this Table :				<sup>1</sup> [78,996,844]

## SECOND SCHEDULE.

### PROVISIONS OF THIS ACT WHICH MAY BE AMENDED WITHOUT AFFECTING THE ACCESSION OF A STATE.

Part I,	in so far as it relates to the Commander-in-Chief.
Part II, chapter II,	save with respect to the exercise by the Governor-General on behalf of His Majesty of the executive authority of the Federation, and the definition of the functions of the Governor-General; the executive authority of the Federation; the functions of the council of ministers, and the choosing and summoning of ministers and their tenure of office; the power of the Governor-General to decide whether he is entitled to act in his discretion, or exercise his individual judgment; the functions of the Governor-General with respect to external affairs and defence; the special responsibilities of the Governor-General relating to the peace or tranquillity of India or any part thereof, the financial stability and credit of the Federal Government, the rights of Indian States and the rights and dignity of their Rulers, and the discharge of his functions by or under the Act in his discretion or in the exercise of his individual judgment; His Majesty's Instrument of Instruc-

<sup>1</sup> These figures were substituted for the original figures by the Government of India (Federal Legislature Amendment) Order, 1936.

Part II, chapter II—  
*contd.*

tions to the Governor-General ; the superintendence of the Secretary of State ; and the making of rules by the Governor-General in his discretion for the transaction of, and the securing of transmission to him of information with respect to, the business of the Federal Government.

„ chapter III, save with respect to the number of the representatives of British India and of the Indian States in the Council of State and the Federal Assembly and the manner in which the representatives of the Indian States are to be chosen ; the disqualifications for membership of a Chamber of the Federal Legislature in relation to the representatives of the States ; the procedure for the introduction and passing of Bills ; joint sittings of the two Chambers ; the assent to Bills, or the withholding assent from Bills, by the Governor-General ; the reservation of Bills for the signification of His Majesty's pleasure ; the annual financial statement : the charging on the revenues of the Federation of the salaries, allowances and pensions payable to or in respect of judges of the Federal Court, of expenditure for the purpose of the discharge by the Governor-General of his functions with respect to external affairs, defence, and the administration of any territory in the direction and control of which he is required to act in his discretion and of the sums payable to His Majesty in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States ; the procedure with respect to estimates and demands for grants ; supplementary financial statements ; the making of rules by the Governor-General for regulating the procedure of, and the conduct of business in, the Legislature in relation to matters where he acts in his discretion or exercises his individual judgment and for prohibiting the discussion of, or the asking of questions on, any matter connected with or the personal conduct of the Ruler or ruling family of any Indian State ; the making of rules by the Governor-General as to the procedure with respect to joint sittings of, and communications between, the two chambers and the protection of judges of the Federal Court and State High Courts from discussion in the Legislature of their conduct.

Part II, chapter IV,	save with respect to the power of the Governor-General to promulgate ordinances in his discretion or in the exercise of his individual judgment, or to enact Governor-General's Acts.
Part III, chapter I.	The whole chapter.
„ chapter II,	save with respect to the special responsibilities of the Governor relating to the rights of Indian States and the rights and dignity of the Rulers thereof and to the execution of orders or directions of the Governor-General, and the superintendence of the Governor-General in relation to those responsibilities.
„ chapter III,	save with respect to the making of rules by the Governor for prohibiting the discussion of, or the asking of questions on, any matter connected with or the personal conduct of the Ruler or ruling family of any Indian State, and the protection of judges of the Federal Court and State High Courts from discussion in the Legislature of their conduct.
„ chapter IV.	The whole chapter.
„ chapter V.	„
„ chapter VI.	„
Part IV.	The whole Part.
Part V, chapter I,	save with respect to the power of the Federal Legislature to make laws for a State ; the power of the Governor-General to empower either the Federal Legislature or Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act ; any power of a State to repeal a Federal law, and the effect of inconsistencies between a Federal law and a State law.
„ chapter II,	save with respect to the previous sanction of the Governor-General to the introduction or moving of any Bill or amendment affecting matters as respects which the Governor-General is required to act in his discretion ; the power of Parliament to legislate for British India or any part thereof, or the restrictions on the power of the Federal Legislature and of Provincial Legislatures to make laws on certain matters.
Part V, chapter III.	The whole chapter.

Part VI,	save in so far as the provisions of that Part relate to Indian States, or empower the Governor-General to issue orders to the Governor of a Province for preventing any grave menace to the peace or tranquillity of India or any part thereof.
Part VII. chapter I,	in so far as it relates to Burma.
chapter II,	save with respect to loans and guarantees to Federated States and the appointment, removal and conditions of service of the Auditor-General.
chapter III,	save in so far as it affects suits against the Federation by a Federated State.
Part VIII,	save with respect to the constitution and functions of the Federal Railway Authority ; the conduct of business between the Authority and the Federal Government, and the Railway Tribunal and any matter with respect to which it has jurisdiction.
Part IX, chapter I,	in so far as it relates to appeals to the Federal Court from High Courts in British India ; the power of the Federal Legislature to confer further powers upon the Federal Court for the purpose of enabling it more effectively to exercise the powers conferred upon it by this Act.
„ chapter II.	The whole chapter.
Part X,	save with respect to the eligibility of Rulers and subjects of Federated States for civil Federal office.
Part XI.	The whole Part.
Part XII,	save with respect to the saving for rights and obligations of the Crown in its relations with Indian States ; the use of His Majesty's forces in connection with the discharge of the functions of the Crown in its said relations ; the limitation in relation to Federated States of His Majesty's power to adapt and modify existing Indian laws ; His Majesty's powers and jurisdiction in Federated States, and resolutions of the Federal Legislature or any Provincial Legislature recommending amendments of this Act or Orders in Council made thereunder ; and save also the provisions relating to the interpretation of this Act so far as they apply to provisions of this Act which may not be amended without affecting the accession of a State.

Part XIII.	The whole Part.
First Schedule.	The whole Schedule, except Part II thereof.
Third Schedule.	The whole Schedule.
Fourth Schedule,	save with respect to the oath or affirmation to be taken or made by the Ruler or subject of an Indian State.
Fifth Schedule.	The whole Schedule.
Sixth Schedule.	„
Seventh Schedule.	Any entry in the Legislative Lists in so far as the matters to which it relates have not been accepted by the State in question as matters with respect to which the Federal Legislature may make laws for that State.
Eighth Schedule.	The whole Schedule.
Ninth Schedule.	„
Tenth Schedule.	„

### THIRD SCHEDULE.<sup>1</sup>

Sections 7, 48. PROVISIONS AS TO GOVERNOR-GENERAL AND GOVERNORS OF PROVINCES.

1. There shall be paid to the Governor-General and to the Governors of the Provinces the following annual salaries, that is to say:—

	Rs.
The Governor-General . . . . .	250,800
The Governor of Madras . . . . .	120,000
The Governor of Bombay . . . . .	
The Governor of Bengal . . . . .	
The Governor of the United Provinces . . . . .	100,000
The Governor of the Punjab . . . . .	
The Governor of Bihar . . . . .	
The Governor of the Central Provinces and Berar . . . . .	72,000
The Governor of Assam . . . . .	66,000
The Governor of the North-West Frontier Province . . . . .	
The Governor of Orissa . . . . .	
The Governor of Sind . . . . .	

2. There shall be paid to the Governor-General and to the Governors such allowances for expenses in respect of equipment and travelling upon appointment and such allowances during their terms of office as may from time

<sup>1</sup> This Schedule came into force on the 1st April, 1937 except in so far as it relates to the Governor-General, see the Government of India (Commencement and Transitory Provisions) Order, 1936, para. 3.

to time be fixed by His Majesty in Council, and such provision shall be made for enabling the Governor-General and the Governors to discharge conveniently and with dignity the duties of their offices as may be determined by His Majesty in Council.

3. While the Governor-General or a Governor is absent on leave, he shall in lieu of his salary be entitled to such leave allowance as may be fixed by His Majesty in Council.

4. There shall be granted to and in respect of the Governor-General and the Governor of every Province such customs privileges as may be specified by Order in Council.

5. While any person appointed by His Majesty to act as Governor-General or as a Governor is so acting, he shall be entitled to the same salary and, save as may be otherwise provided by His Majesty in Council, the same allowances and privileges as the Governor-General or that Governor.

6. Any sums required to give effect to the provisions of this Schedule shall, in the case of the Governor-General or a person acting as such, be paid out of and charged on the revenues of the Federation and, in the case of a Governor or a person acting as such, be paid out of and charged on the revenues of the Province.

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#### FOURTH SCHEDULE.<sup>1</sup>

##### FORMS OF OATHS OR AFFIRMATIONS.

Sections 24,  
67, 200, 220.

##### 1.

Form of oath or affirmation to be taken or made by a member of a Legislature who is a British subject :—

“ I, A.B., having been elected [*or nominated or appointed*] a member of this Council [*or Assembly*], do solemnly swear [*or affirm*] that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, His heirs and successors. and that I will faithfully discharge the duty upon which I am about to enter.”

##### 2.

Form of oath or affirmation to be taken or made by a member of a Legislature who is the Ruler of an Indian State :—

“ I, A.B., having been elected [*or nominated or appointed*] a member of this Council [*or Assembly*], do solemnly swear [*or affirm*] that I will be faithful and bear true allegiance in my capacity as Member of this Council [*or Assembly*] to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.”

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<sup>1</sup> This Schedule came into force on the 1st April, 1937, see the *Government of India (Commencement and Transitory Provisions) Order, 1936*, para. 3. .



## 3.

Form of oath or affirmation to be taken or made by a member of a Legislature who is a subject of the Ruler of an Indian State :—

“ I, A.B., having been elected [*or nominated or appointed*] a member of this Council [*or Assembly*], do solemnly swear [*or affirm*] that saving the faith and allegiance which I owe to C.D., his heirs and successors, I will be faithful and bear true allegiance in my capacity as Member of this Council [*or Assembly*] to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.”

## 4.

Form of judicial oath or affirmation to be taken or made by a British subject :—

“ I, A.B., having been appointed Chief Justice [*or a judge*] of the Court do solemnly swear [*or affirm*] that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, His heirs and successors and that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment.”

## 5.

Form of judicial oath or affirmation to be taken or made by a subject of the Ruler of an Indian State :—

“ I, A.B., having been appointed Chief Justice [*or a judge*] of the Court do solemnly swear [*or affirm*] that saving the faith and allegiance which I owe to C.D., his heirs and successors, I will be faithful and bear true allegiance in my judicial capacity to His Majesty the King, Emperor of India, his heirs and successors, and that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment.”

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## FIFTH SCHEDULE.<sup>1</sup>

### Section 61.

### COMPOSITION OF PROVINCIAL LEGISLATURES.

#### *General qualification for Membership.*

1. A person shall not be qualified to be chosen to fill a seat in a Provincial Legislature unless he—

(a) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Federation or, if it is so prescribed

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<sup>1</sup> This Schedule came into force on the 1st April, 1937, see the Government of India (Commencement and Transitory Provisions) Order, 1936, para. 3.

with respect to any Province, the Ruler or a subject of any prescribed Indian State ; and

- (b) is, in the case of a seat in a Legislative Assembly, not less than twenty-five years of age, and in the case of a seat in a Legislative Council, not less than thirty years of age ; and
- (c) possesses such, if any, of the other qualifications specified in, or prescribed under, this Schedule as may be appropriate in his case.

2. Upon the expiration of the term for which he is chosen to serve as a member of a Provincial Legislature, a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term.

*Legislative Assemblies.*

3. The allocation of seats in Provincial Legislative Assemblies shall be as shown in the relevant Table of Seats appended to this Schedule.

4. In the Legislative Assembly of each Province specified in the first column of the Table of Seats there shall be the number of seats specified in the second column opposite to that Province, and of those seats—

- (i) the number specified in the third column shall be general seats, of which the number specified in the fourth column shall be reserved for members of the scheduled castes and, in the case of Bombay, seven shall be reserved for Marathas ;
- (ii) the numbers specified in the next ten columns shall be the numbers of seats to be filled by persons chosen to represent respectively—
  - (a) backward areas and backward tribes ; (b) the Sikh community ; (c) the Muhammadan community ; (d) the Anglo-Indian community ; (e) the European community ; (f) the Indian Christian community ; (g) the interests of commerce, industry, mining and planting ; (h) landholders ; (i) universities ; and (j) the interests of labour ; and
- (iii) the numbers specified in the last five columns shall be the numbers of seats (being either general seats, Sikh seats, Muhammadan seats, Anglo-Indian seats or Indian Christian seats) reserved for women.

In the Punjab one of the landholders' seats shall be a seat to be filled by a Tumandar.

5. A Province, exclusive of any portion thereof which His Majesty in Council may deem unsuitable for inclusion in any constituency or in any constituency of any particular class, shall be divided into territorial constituencies—

- (i) for the election of persons to fill the general seats ;
- (ii) for the election of persons to fill the Sikh seats, if any ;
- (iii) for the election of persons to fill the Muhammadan seats ;

- (iv) for the election of persons to fill the Anglo-Indian seats, if any ;
- (v) for the election of persons to fill the European seats, if any ; and
- (vi) except in the case of Bihar, for the election of persons to fill the Indian Christian seats, if any,

or, if as respects any class of constituency it is so prescribed, may form one territorial constituency.

In the case of each such class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those seats to each constituency.

6. The required number of general seats to be reserved for members of the scheduled castes, and in the Province of Bombay for Marathas, shall be reserved by reserving for members of those castes or, as the case may be, for Marathas one or more seats in each of so many of the general territorial constituencies as may be necessary, so, however, that in each such constituency there shall be at least one unreserved seat.

7. In a province in which any general seats are reserved for members of the scheduled castes, all members of those castes who are entitled to vote in a constituency in which any seat is so reserved shall be entitled to take part in a primary election held for the purpose of electing four candidates for each seat so reserved and no member of those castes not elected as a candidate at such an election shall be qualified to hold—

(a) a seat so reserved in that constituency ;

(b) if it is so prescribed as respects that Province, any seat in that constituency.

In relation to bye-elections this paragraph shall have effect with such adaptations and modifications as may be prescribed.

8. The persons to fill the seats specified in columns fifteen to nineteen of the Table of Seats as seats to be filled by women shall be chosen in territorial constituencies, which shall be either—

(a) constituencies formed under paragraph five of this Schedule ; or

(b) constituencies specially formed for the purpose of electing women members.

9. The provisions of the Sixth Schedule to this Act shall have effect with respect to the persons who are entitled to vote at elections in the territorial constituencies mentioned in paragraphs five and eight of this Schedule.

10. In a Province in which any seats are to be filled by representatives of backward areas or backward tribes, representatives of commerce, industry, mining and planting, representatives of landholders, representatives of universities or representatives of labour, persons to fill those seats, and in Bihar the person to fill the Indian Christian seat, shall be chosen in such manner as may be prescribed :

Provided that in a Province in which any seats are to be filled by representatives of backward areas or backward tribes some or all of those seats

may, if it is so prescribed, be treated in the prescribed manner as additional general seats to be reserved for representatives of such areas or tribes.

11. In the Punjab the landholder's seat to be filled by a Tumandar shall be assigned to such constituency as may be prescribed.

12. A person [shall not be qualified to be chosen to fill a seat]<sup>1</sup> in the Legislative Assembly of a Province unless—

- (a) in the case of a seat to be filled by a woman, by a European, by an Indian Christian, by a representative of backward areas or backward tribes, by a representative of commerce, industry, mining and planting, by a representative of universities or by a representative of labour, he possesses such qualifications as may be prescribed ; and
- (b) in the case of any other seat, he is entitled to vote in the choice of a member to fill that seat or any other seat of a similar class in that Province.

*Legislative Councils.*

13. The allocation of seats in the Legislative Councils of Provinces having such Councils shall be as shown in the relevant Table of Seats appended to this Schedule.

14. In the Legislative Council of each Province specified in the first column of the Table of Seats there shall be the number of seats specified in the second column opposite to that Province, and of those seats—

- (a) the number specified in the third column shall be general seats ;
- (b) the numbers specified in the fourth, fifth and sixth columns shall be seats to be filled by persons chosen to represent respectively the Muhammadan community, the European community and the Indian Christian community ;
- (c) the number specified in the seventh column shall be seats to be filled by persons elected by the members of the Legislative Assembly of the Province in accordance with the system of proportional representation by means of the single transferable vote ; and
- (d) the number specified in the eighth column shall be seats to be filled by persons chosen by the Governor in his discretion.

15. A Province, exclusive of any portion thereof which His Majesty in Council may deem unsuitable for inclusion in any constituency or in any constituency of any particular class, shall be divided into territorial constituencies—

- (i) for the purpose of electing persons to fill the general seats ;
- (ii) for the purpose of electing persons to fill the Muhammadan seats ;

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<sup>1</sup> These words were substituted for the words " shall not be qualified to hold a seat " by para. 1 of the First Sch. to the Government of India (Provincial Legislative Assemblies) Order, 1936.

- (iii) for the purpose of electing persons to fill the European seats ;
- (iv) for the purpose of electing persons to fill the Indian Christian seats, if any,

or, if as respects any class of constituency it is so prescribed, may form one territorial constituency.

In the case of each such class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those seats to each constituency.

16. At an election in a constituency to fill a general seat, persons entitled to vote in a Muhammadan constituency, a European constituency, or an Indian Christian constituency shall not be entitled to vote.

In the case of a Muhammadan constituency, a European constituency, or an Indian Christian constituency no person shall be entitled to vote who is not, as the case may be, a Muhammadan, a European, or an Indian Christian.

17. The qualifications entitling a person to vote in territorial constituencies at elections of members of a Provincial Legislative Council, and the qualifications to be possessed by members of such Councils, shall be such as may be prescribed.

18. The term of office of a member of the Legislative Council of a Province, other than a member chosen to fill a casual vacancy, shall be nine years, but upon the first constitution of the Council the Governor in his discretion shall make by order such provision as he thinks fit, by curtailing the term of office of some of the members then chosen, for securing that, as nearly as may be, one-third of the members holding seats of each class shall retire in every third year thereafter.

A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office.

#### *General.*

19. In the foregoing provisions of this Schedule the following expressions have the meanings hereby assigned to them, that is to say,—

- “ a European,” “ an Anglo-Indian,” “ an Indian Christian ” and “ the scheduled castes ” have the same meanings respectively as they have in Part I of the First Schedule to this Act ;
- “ backward areas ” and “ backward tribes ” mean respectively such areas and tribes as His Majesty in Council may from time to time declare to be areas and tribes to which a special system of representation is more appropriate ; and
- “ prescribed ” means prescribed by His Majesty in Council or, so far as regards any matter which under this Act the Provincial Legislature or the Governor are competent to regulate, prescribed by an Act of that Legislature or by a rule made under the next succeeding paragraph.

20. In so far as provision with respect to any matter is not made by this Act or by His Majesty in Council or, after the constitution of the Provincial Legislature, by Act of that Legislature (where the matter is one with respect to which that Legislature is competent to make laws), the Governor, exercising his individual judgment, may make rules for carrying into effect the foregoing provisions of this Schedule and the provisions of the Sixth Schedule and securing the due constitution of the Provincial Legislature and in particular, but without prejudice to the generality of the foregoing words, with respect to—

- (i) the notification of vacancies, including casual vacancies, and the proceedings to be taken for filling vacancies ;
- (ii) the nomination of candidates ;
- (iii) the conduct of elections, including the application to elections of the principle of proportional representation by means of the single transferable vote, and the rules to regulate elections where certain of the seats to be filled are reserved for members of the scheduled classes, or in the case of Bombay for Marathas, or where certain of the seats allotted to any community must be held by a woman or by a specified type of landholders ;
- (iv) the expenses of candidates at elections ;
- (v) corrupt practices and other offences at or in connection with elections ;
- (vi) the decision of doubts and disputes arising out of or in connection with elections ; and
- (vii) the manner in which the rules are to be carried into effect.

TABLE OF SEATS.

## Provincial Legislative Assemblies.

1	2	3			4	5	6	7	8	9	10	11	12	13	14	15				18	19											
		General Seats.														Seats for representatives of backward areas and tribes.	Sikh Seats.	Muhammadan Seats.	Anglo-Indian Seats.			European Seats.	Indian Christian Seats.	Seats for representatives of commerce, industry, mining and planting.	Landholders Seats.	University Seats.	Seats for representatives of labour.	General.	Sikh.	Muhammadan.	Anglo-Indian.	Indian Christian.
		Total of General Seats.	General Seats reserved for Scheduled Castes.	General Seats.																												
Province.	Total Seats.	146	30	1	1	—	28	2	3	3	8	6	6	1	6	6	6	—	1	1												
Madras	215	114	15	1	1	—	29	2	3	3	3	7	2	1	7	5	—	—	—	—												
Bombay	175	78	30	—	—	—	117	3	11	2	2	19	5	2	8	2	2	1	—	—												
Bengal	250	140	20	—	—	—	64	1	2	2	2	3	6	1	3	4	—	2	—	—												
United Provinces	228	42	8	—	—	31	84	1	2	2	1	1	5	1	3	1	—	—	—	—												
Punjab	175	86	15	7	7	—	39	1	2	1	—	4	4	1	3	—	—	—	—	—												
Bihar	152	84	20	1	1	—	14	1	1	1	—	2	3	1	2	3	—	—	—	—												
Central Provinces and Berar.	112	47	7	9	9	—	34	—	1	1	1	11	—	—	4	1	—	—	—	—												
Assam	108	9	—	—	—	3	36	—	—	—	—	—	2	—	—	—	—	—	—	—												
North-West Frontier Province.	50	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—												
Orissa	60	44	6	5	5	—	4	—	—	—	1	1	2	—	1	2	—	—	—	—												
Sind	60	18	—	—	—	—	33	—	—	2	—	2	2	—	1	1	—	—	—	—												

In Bombay seven of the general seats shall be reserved for Marathas.

In the Punjab one of the Landholders' seats shall be a seat to be filled by a Tumandar.

In Assam and Orissa the seats reserved for women shall be non-communal seats.

TABLE OF SEATS.

*Provincial Legislative Councils.*

1 Province.	2 Total of Seats.	3 General Seats.	4 Muhammadan Seats.	5 European Seats.	6 Indian Christian Seats.	7 Seats to be filled by Legislative Assembly.	8 Seats to be filled by Governor.
Madras . . . . .	{ Not less than 54 Not more than 56	35	7	1	3	{ —	{ Not less than 8. Not more than 10.
Bombay . . . . .	{ Not less than 29 Not more than 30	20	5	1	—	{ —	{ Not less than 3. Not more than 4.
Bengal . . . . .	{ Not less than 63 Not more than 65	10	17	3	—	{ 27	{ Not less than 6. Not more than 8.
United Provinces . . . . .	{ Not less than 58 Not more than 60	34	17	1	—	{ —	{ Not less than 6. Not more than 8.
Bihar . . . . .	{ Not less than 29 Not more than 30	9	4	1	—	{ 12	{ Not less than 3. Not more than 4.
Assam . . . . .	{ Not less than 21 Not more than 22	10	6	2	—	{ —	{ Not less than 3. Not more than 4.



Schedule 5  
(9).

SIXTH SCHEDULE.<sup>1</sup>

## PROVISIONS AS TO FRANCHISE.

## PART I.

*General.*

1. There shall be an electoral roll for every territorial constituency and no person who is not, and, except as expressly provided by this Schedule, every person who is, for the time being included in the electoral roll for any such constituency shall be entitled to vote in that constituency.

2. The electoral rolls for the territorial constituencies shall be made up and from time to time in whole or in part revised by reference to such date, in this Schedule referred to as "the prescribed date," as may be directed in each case by the Governor, exercising his individual judgment.

3. No person shall be included in the electoral roll for any territorial constituency unless he has attained the age of twenty-one years and is either—

(a) a British subject; or

(b) the Ruler or a subject of a Federated State; or

(c) if and so far as it is so prescribed with respect to any Province, and subject to any prescribed conditions, the Ruler or a subject of any other Indian State.

4. No person shall be included in the electoral roll for, or vote at any election in, any territorial constituency if he is of unsound mind and stands so declared by a competent court.

5. No person shall be included in the electoral roll for a Sikh constituency, a Muhammadan constituency, an Anglo-Indian constituency, a European constituency or an Indian Christian constituency unless he is a Sikh, a Muhammadan, an Anglo-Indian, a European or an Indian Christian, as the case may be.

6. No person who is or is entitled to be included in the electoral roll for any Sikh constituency, Muhammadan constituency, Anglo-Indian constituency, European constituency or Indian Christian constituency in any Province shall be included in the electoral roll for a general constituency in that Province<sup>2</sup> \* \* \* \* :

Provided that this paragraph shall not apply in relation to the general seats reserved for women in Assam and Orissa or the constituencies for the election of persons to fill those seats.

7. No person shall in any Province vote at a general election in more than one territorial constituency, and in each Province such provisions, if any, as

<sup>1</sup> This Schedule came into force on the 1st April, 1937, see the Government of India (Commencement and Transitory Provisions) Order, 1936, para. 3.

<sup>2</sup> The words "or vote at any election to fill a general seat therein" were omitted by para. 2 of the First Schedule of the Government of India (Provincial Legislative Assemblies) Order, 1936.

may be prescribed in relation to that Province shall have effect for the purpose of preventing persons being included in the electoral roll for more than one territorial constituency in the Province :

<sup>1</sup>[ If a person votes at more than one constituency in contravention of this paragraph, his votes in each of the constituencies shall be void.]

Provided that, in any Province in which territorial constituencies have been specially formed for the purpose of electing women members, nothing in this paragraph or in any such provisions shall prevent a person from being included in the electoral roll for, and voting at a general election in, one territorial constituency so formed and also one territorial constituency not so formed.

8. No person shall be included in the electoral roll for, or vote at any election in, a territorial constituency if he is for the time being disqualified from voting under the provisions of any such Order in Council, Act of the Provincial Legislature or rules made by the Governor as may be made or passed under this Act with respect to corrupt practices and other offences in connection with elections, and the name of any person who becomes so disqualified shall forthwith be struck off all the electoral rolls for territorial constituencies in which it may be included.

9. No person shall vote at any election in any territorial constituency, if he is for the time being undergoing a sentence of transportation, penal servitude, or imprisonment.

10. The following provisions shall have effect with respect to the enfranchisement of women in respect of the qualifications of their husbands—

- (a) a woman who, at the date of the death of her husband, is included in an electoral roll for a territorial constituency by virtue of his qualifications shall, notwithstanding anything in the subsequent provisions of this Schedule, continue to be on the roll for that constituency unless she remarries or becomes disqualified under the foregoing provisions of this Schedule for inclusion in that roll ;
- (b) not more than one woman shall at any one time appear in the electoral rolls for the territorial constituencies in a Province in respect of the qualifications of any particular man and any question which of several women is to be selected for inclusion shall be determined in the prescribed manner :

Provided that, if a woman who is entitled by virtue of sub-paragraph (a) of this paragraph to remain on the roll of a territorial constituency changes her place of residence, then, if she so desires, she may, on any subsequent revision of the roll, be transferred to the roll of such other territorial constituency as may be appropriate.

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<sup>1</sup> These words were inserted by para. 3 of the First Schedule to the Government of India (Provincial Legislative Assemblies) Order, 1936.

11. For the purposes of this Schedule any property owned, held, or occupied or payment made by, or assessment made on, a person as a trustee, guardian, administrator or receiver or in any other fiduciary capacity, shall, except as otherwise expressly provided in this Schedule, be left out of account.

12. This Schedule shall have effect as if any reference therein to an officer, non-commissioned officer, or soldier of His Majesty's regular military forces included a reference to an officer or man of any British India police force, not being an officer or man who has been dismissed or discharged from that force for disciplinary reasons, and a reference to an officer, non-commissioned officer or soldier of the Auxiliary Force (India) or the Indian Territorial Force, not being an officer, non-commissioned officer or soldier who has been dismissed or discharged from the force for disciplinary reasons, or has served in the force for less than four years.

13. (1) In this Schedule, except where the context otherwise requires—

“territorial constituency” means one of the territorial constituencies mentioned in paragraphs five and eight of the Fifth Schedule to this Act;

“European,” “Anglo-Indian,” “Indian Christian” and “scheduled castes” have the same meanings respectively as they have in Part I of the First Schedule to this Act;

“Indian Christian constituency” does not include any constituency which may be formed for choosing persons to fill the Indian Christian seat in Bihar;

“person” does not include a body of persons;

“prescribed,” except in the phrase “the prescribed date,” has the same meaning as in the Fifth Schedule to this Act;

“previous financial year,” “previous Bengali year” and “previous fasli year” mean, respectively, the financial year, the Bengali year, and the fasli year immediately preceding that in which the prescribed date falls;

“house” and “building” include, respectively, a part of a house or building separately occupied as a dwelling or for the purposes of any trade, business, or profession;

“literate” means, in relation to any person, able to read and write in some language or dialect selected by him, being a language or dialect in common use in some part of India;

“cantonment” means a cantonment for the purposes of the Cantonments Act, 1924, and “cantonment record” means a record prepared under that Act.

(2) Any reference in this Schedule to “urban constituencies” or “rural constituencies” shall be construed as a reference to such territorial constituencies as may be classified as urban or rural constituencies, respectively, by an Order in Council delimiting territorial constituencies:

Provided that any such Order in Council may direct that any Anglo-Indian constituency, European constituency, or Indian Christian constituency shall be deemed to be an urban constituency for some purposes and a rural constituency for other purposes.

(3) Any reference in this Schedule to persons assessed to income tax in any financial year shall be deemed to include a reference to any partner in a firm assessed to income tax in that year if his share of the firm's income on which income tax was so assessed is certified in the prescribed manner to have been not less than the minimum on which the tax is leviable.

(4) If any question arises under this Schedule whether any person is or is not a Sikh, he shall be deemed to be a Sikh if and only if he makes in the prescribed manner a declaration in the prescribed form that he is a Sikh.

(5) Any reference in this Schedule to a retired, pensioned or discharged officer, non-commissioned officer or soldier of any force shall be deemed not to include a reference to any person who has been dismissed or discharged from that force for disciplinary reasons.

(6) Any reference in this Schedule to all or any of the provisions of any Indian Act shall be construed as a reference to those provisions as amended by or under any other Act or, if those provisions are repealed and re-enacted with or without modification, to the provisions so re-enacted.

1\*                    \*                    \*                    \*                    \*                    \*                    \*

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## PART II.

### MADRAS.

#### *General requirement as to residence.*

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he has resided in a house in the constituency for a period of not less than one hundred and twenty days in the previous financial year.

A person is deemed to reside in a house if he sometimes uses it as a sleeping place and a person is not deemed to cease to reside in a house merely because he is absent from it or has another dwelling in which he resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning.

#### *Qualifications dependent on taxation.*

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to

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<sup>1</sup> Sub-paragraph (7) was omitted by para. 22 of Part I of the Government of India (Provincial Legislative Assemblies) Order, 1936.

be included in the electoral roll for any territorial constituency if in the previous financial year he—

- (a) paid tax under the Madras Motor Vehicles Taxation Act, 1931, for the whole of that year ; or
- (b) paid for both the half years of that year to a municipality, local board or cantonment authority in the Province profession tax under the Madras City Municipal Act, 1919, the Madras District Municipalities Act, 1920, the Madras Local Boards Act, 1920, or the Cantonments Act, 1924 ; or
- (c) paid for both the half years of that year to a municipality or cantonment authority in the Province property tax under any of the said Acts ; or
- (d) paid for both the half years of that year house tax under the Madras Local Boards Act, 1920 ; or
- (e) occupied as sole tenant throughout that year a house in respect of which property tax or house tax has been paid for both the half years of that year under any of the Acts mentioned in this paragraph ; or
- (f) was assessed to income tax.

*Qualifications dependent on property, etc.*

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) was on the last day of the previous fasli year a registered landholder, inamdar, ryotwari pattadar or occupancy ryot under the Madras Estates Land Act, 1908 ; or
- (b) was in and for the previous fasli year assessed to ground rent payable to the Government of the Province ; or
- (c) was throughout the previous fasli year a kanamdar or kuzhikanamdar or the holder of a kudiyiruppu or a verumpattamdar having fixity of tenure, each of these terms having the meaning assigned to it in the Malabar Tenancy Act, 1929 ; or
- (d) was throughout the previous fasli year a mortgagee with possession or lessee, under a registered instrument, of immovable property in the Province (other than house property) of an annual rent value, in the case of an urban constituency, of not less than one hundred rupees, and, in the case of a rural constituency of not less than fifty rupees.

4. (1) Sub-paragraph (a) of the last preceding paragraph shall not apply in relation to registered joint landholders, registered joint inamdars, registered joint ryotwari pattadars or registered joint occupancy ryots, but in relation to such persons (being persons so registered on the last day of the previous fasli year) the following provisions of this paragraph shall have effect.

(2) Where the joint holding of any joint landholders or joint holders of a whole-inam village is of an annual rental of one thousand rupees or upwards, then subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, one registered joint holder for every complete five hundred rupees of the annual rental of the joint holding shall be qualified to be included in the electoral roll of the appropriate territorial constituency.

(3) Where the annual assessment, rent or kist of the joint holding of joint holders of a minor inam, a ryotwari patta or an estate patta is one hundred rupees or upwards, then, subject as aforesaid, one registered joint holder for every complete fifty rupees of the annual assessment, rent or kist shall be qualified to be included in the electoral roll of the appropriate territorial constituency.

(4) In other cases, one of the registered joint holders shall, subject as aforesaid, be qualified to be included in the electoral roll of the appropriate territorial constituency.

(5) The registered holders to be included under this paragraph in an electoral roll in respect of a joint holding shall be those nominated in an application in that behalf, signed by a majority of the registered joint holders.

*Qualification by reason of guardianship.*

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is on the prescribed date the guardian of a minor who by virtue of the foregoing provisions of this Part of this Schedule would have been entitled to be included in the electoral roll for that constituency if he were of full age and satisfied the requirements of paragraph one of this Part of this Schedule.

*Qualification by reason of literacy.*

6. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to be literate.

*Qualification by reason of service in His Majesty's Forces.*

7. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

*Additional qualifications for women.*

8. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

(a) if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces ; or

(b) if her husband possesses the qualifications requisite for the purpose of this paragraph.

9. A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he either—

- (a) was assessed in the previous financial year to income tax ; or
- (b) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces ; or
- (c) occupied for not less than six months in the previous financial year a house in the City of Madras the annual value whereof was not less than sixty rupees, not being a house in any military or police lines ; or
- (d) was assessed in the Province in the previous financial year to tax on companies ; or
- (e) was assessed in the Province in the previous financial year to an aggregate amount of not less than three rupees in respect of either or both of the following taxes, namely, property tax or profession tax ; or
- (f) <sup>1</sup>[was on the last day of the previous fasli year registered] as a ryotwari pattadar or an inamdar of land the annual rent value whereof is not less than ten rupees ; or
- (g) <sup>2</sup>[held throughout the previous fasli year] under a ryotwari pattadar or an inamdar a registered lease of land the annual rent value whereof is not less than ten rupees ; or
- (h) <sup>1</sup>[was on the last day of the previous fasli year registered] jointly with the proprietor under section fourteen of the Malabar Land Registration Act, 1895, as the occupant of land the annual rent value whereof is not less than ten rupees ; or
- (i) <sup>3</sup>[was on the last day of the previous fasli year a registered landholder] holding an estate the annual rent value whereof is not less than ten rupees ; or
- (j) <sup>2</sup>[held on the last day of the previous fasli year] as ryot, or as tenant under a landholder, land the annual rent value whereof is not less than ten rupees.

<sup>4</sup>[ *Special qualification for Scheduled Castes.*

9-A. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person who is a member of the scheduled castes shall be qualified to be included in the electoral roll for

<sup>1</sup> These words were substituted for the words "is registered" by para. 9 of Part II of the Government of India (Provincial Legislative Assemblies) Order, 1936.

<sup>2</sup> These words were substituted for the word "holds," *ibid.*

<sup>3</sup> These words were substituted for the words "is a landholder," *ibid.*

<sup>4</sup> The heading and para. 9-A were inserted by para. 8, *ibid.*

any territorial constituency if throughout the previous fasli year he occupied as owner or lessee a house in a municipality, a cantonment or an area subject to the jurisdiction of a local board, with an annual rent value of not less than eighteen rupees, or a house elsewhere with an annual rent value of not less than twelve rupees.]

*Application necessary for enrolment in certain cases.*

<sup>1</sup>[10. No person shall, by virtue of sub-paragraph (e) of paragraph two, sub-paragraph (c) or sub-paragraph (d) of paragraph three, paragraph five or paragraph six of this Part of this Schedule or by virtue of her husband being a retired, pensioned or discharged officer, non-commissioned officer or soldier, be included in the electoral roll for any territorial constituency, unless application is made in the prescribed manner by, or, if it is so prescribed, on behalf of, that person, that that person should be so included.]

*General provisions as to joint property, etc.*

11. (1) Subject to the provisions of this paragraph, property held and payments made jointly by, and assessments made jointly on, more than one person, shall be left out of account for the purposes of this Part of this Schedule.

(2) Where any such property, payments or assessments would qualify a person if they had been held or made by, or made on, him solely, then, subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, one of those persons shall be qualified in respect of the property, payment or assessment and that person shall be—

- (a) if the property is held, or the payments or assessments made, by or on a Hindu joint family, the manager thereof;
- (b) if the property is held or the payments or assessments made by or on any other joint family, the member thereof authorised in that behalf by the family themselves;
- (c) in any other case, the person authorised in that behalf by a majority of the persons by or on whom the property is held or the payments or assessments made.

(3) Nothing in this paragraph affects paragraph four of this Part of this Schedule, or the provisions of Part I of this Schedule relating to partners in firms assessed to income tax.

*Interpretation, etc.*

12. (1) In this Schedule, in relation to Madras—

“estate” means an estate as defined in the Madras Estates Land Act, 1908;

“fasli year” means a year ending on the thirtieth day of June;

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<sup>1</sup> This para. was substituted by para. 7 of Part II of the Government of India (Provincial Legislative Assemblies) Order, 1936.



“landholder” means a person owning an estate or part of an estate and includes every person entitled to collect the rent of the whole or part of an estate by virtue of any transfer from the owner or his predecessor in title or of any order of a competent court, or of any provision of law ;

“rent value” means the value as determined in accordance with the provisions of section seventy-nine of the Madras Local Boards Act, 1920, with reference to the accounts of the previous fasli year or, in any case in which it is not possible so to determine the rent value, such value as appears to the registration officer to be the rent value ;

“tenant” includes all persons who, whether personally or by an agent, occupy a house or land under the owner or landholder or intermediate landholder, whether or not rent is paid to the owner, landholder or intermediate landholder, as the case may be, except that it does not include any person occupying a house in military or police lines rent free by virtue of any office, service or employment.

(2) A person who is paying or is liable to pay the rent of a house shall be deemed to occupy it.

<sup>1</sup>[(3) References in this Part of this Schedule to, or to taxes payable in respect of, land or houses relate exclusively to land or houses in the Province.]

### PART III.

#### BOMBAY.

##### *General requirement as to residence.*

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he satisfies the requirement as to residence in relation to that constituency.

For the purposes of this Part of this Schedule a person shall be deemed to satisfy the requirement as to residence—

- (a) in relation to a Bombay city constituency, if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the city of Bombay or in the Thana mahal or the South Salsette taluka ;
- (b) in relation to any other urban constituency, if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the constituency or within two miles of the boundary thereof ;

<sup>1</sup> This sub-paragraph was added by para. 9 of Part II of the Government of India (Provincial Legislative Assemblies) Order, 1936.

- (c) in the case of a rural constituency, if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the constituency, or in a contiguous constituency of the same communal description :

Provided that a person shall be deemed to satisfy the requirement as to residence in relation to any European or Anglo-Indian territorial constituency if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the Province.

A person is deemed to reside in a house if he sometimes uses it as a sleeping place, and a person is not deemed to cease to reside in a house merely because he is absent from it or has another dwelling in which he resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning.

*Qualifications dependent on taxation.*

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency, if he was assessed during the previous financial year to income tax.

*Qualifications dependent on property.*

3. Subject as aforesaid a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) holds in his own right, or occupies as a tenant, alienated or unalienated land or land on talukdari tenure, being land in the constituency assessed at, or of the assessable value of, not less than eight rupees land revenue ; or
- (b) is the alienee of the right of the Government to the payment of rent or land revenue amounting to not less than eight rupees in respect of alienated land in the constituency ; or
- (c) is a khot or sharer in a khoti village in the constituency, or a sharer in a bhagdari or narwadari village in the constituency, and is responsible for the payment of not less than eight rupees land revenue ; or
- (d) occupies in the constituency as owner or tenant a house or building, situate in the city of Bombay or in any municipal borough, municipal district, cantonment or notified area, and having at least the appropriate value.

In sub-paragraph (d) of this paragraph, the expression “ the appropriate value ” means—

- (i) in relation to a house or building situate within the city of Bombay, an annual rental value of sixty rupees ;

- (ii) in relation to a house or building situate outside the city of Bombay but in an area in which a tax is based on the annual rental value of houses or buildings, an annual rental value of eighteen rupees ;
- (iii) in relation to any other house or building, a capital value of seven hundred and fifty rupees.

*Educational qualification.*

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the matriculation or school leaving examination of the University of Bombay, or an examination prescribed as at least equivalent to either of those examinations, or, if it is so prescribed, any other prescribed examination, not lower than a vernacular final examination.

*Qualification by reason of service in His Majesty's Forces.*

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

*Additional qualifications for women.*

6. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

- (a) if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces ; or
- (b) if she is shown in the prescribed manner to be literate ; or
- (c) if her husband possesses the qualifications requisite for the purposes of this paragraph.

7. A husband shall not be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph unless he satisfies the requirement as to residence in relation to the constituency in question, but subject as aforesaid a husband shall be deemed to possess the said qualifications if—

- (a) in the previous financial year, he was assessed to income tax ; or
- (b) he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces ; or
- (c) in the constituency he holds in his own right, or occupies as tenant, alienated or unalienated land or land on talukdari tenure assessed at, or of the assessable value of, not less than sixteen rupees land revenue in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or in the Ratnagiri district, or not less than thirty-two rupees land revenue elsewhere ; or

- (d) he is the alienee of the right of the Government to the payment of rent or land revenue in respect of alienated land in the constituency amounting to not less than sixteen rupees in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or in the Ratnagiri district and to not less than thirty-two rupees elsewhere ; or
- (e) he is a khot or sharer in a khoti village in the constituency or a sharer in a bhagdari or narwadari village in the constituency and, in either case, is responsible for the payment, in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or in the Ratnagiri district, of not less than sixteen rupees land revenue, and, elsewhere, of not less than thirty-two rupees land revenue ; or
- (f) he occupies as owner or tenant in the constituency a house or building situate in the city of Bombay or in a municipal borough, municipal district, cantonment or notified area and having at least the appropriate value.

In sub-paragraph (f) of this paragraph, the expression "appropriate value" means—

- (i) in relation to a house or building in the city of Bombay, an annual rental value of one hundred and twenty rupees ;
- (ii) in relation to a house or building in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or the Ratnagiri district, situate in an area in which any tax is based on the annual rental value of houses or buildings, an annual rental value of twenty-four rupees ;
- (iii) in relation to any other house or building in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or the Ratnagiri district, a capital value of one thousand rupees ;
- (iv) in relation to a house or building in any other area in which any tax is based on the annual rental value of houses or buildings, an annual rental value of thirty-six rupees ; and
- (v) in relation to any other house or building, a capital value of one thousand five hundred rupees.

*Special qualification for scheduled castes.*

8. Subject as aforesaid a person who is a member of the scheduled castes shall also be qualified to be included in the electoral roll for any territorial constituency if either—

- (a) he is shown in the prescribed manner to be literate ; or
- (b) he was at any time during the year ending on the thirty-first day of December next preceding the prescribed date a person actually performing in the Province the duties of an inferior village office, whether hereditary or not :

Provided that a person who has been dismissed for misconduct and has not been re-employed shall not by virtue of sub-paragraph (b) of this paragraph be qualified to be entered in any electoral roll.

*Application necessary for enrolment in certain cases.*

9. No person shall by virtue of paragraph four or of paragraph six of this Part of this Schedule be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by him or, if it is so prescribed, on his behalf, that he should be so included :

Provided that, except in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall, in relation to women qualified by virtue of their husbands' qualifications, have effect only where the husband's qualification is that mentioned in sub-paragraph (b) of paragraph seven of this Part of this Schedule.

*Provisions as to joint property, etc.*

10. (1) Subject to the provisions of this paragraph, any reference in this Part of this Schedule to land or other immovable property, or to rent or land revenue in respect of alienated land, shall, in relation to any persons who are co-sharers in such land, property, rent or land revenue, be construed as a reference to the respective shares of those persons.

(2) Where two or more persons occupy any house, the rental value of the house shall, in relation to each of those persons, be deemed to be the rental value thereof divided by the number of those persons.

(3) Where property is owned, held or occupied, or payments are made, jointly by, or assessments are made jointly on, the members of a joint family, and the property, payments or assessments would qualify a person if they had been owned, held, occupied or made by or on him solely, then, subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, one member of the family shall be qualified in respect of the property, payment or assessment, and that person shall be, in the case of a Hindu joint family, the manager thereof and, in other cases, the member authorised in that behalf by the family themselves.

Save as aforesaid, any property owned, held or occupied, or payments made, jointly by, or assessments made jointly on, the members of a joint family shall be left out of account for the purposes of this Part of this Schedule.

(4) Nothing in this paragraph affects the provisions of Part I of this Schedule relating to partners in firms assessed to income tax.

*Interpretation, etc.*

11. (1) In this Schedule, in relation to Bombay—

“holder” means a person lawfully in possession of land, whether his possession is actual or not, and “hold” shall be construed accordingly ;

“tenant” means a lessee, whether holding under an instrument or under an oral agreement, and includes a mortgagee of a tenant’s rights with possession, and, in relation to a house not situate in military or police lines, also includes any person occupying the house rent-free by virtue of any office, service or employment;

“Bombay city constituency” means a constituency comprising any part of the city of Bombay.

(2) The value of any machinery, furniture or equipment contained in or situate upon any house or building shall not be included in estimating for the purposes of this Part of this Schedule the rental value or the capital value of the house or building.

(3) In computing for the purposes of this Part of this Schedule the assessable value of any land, regard shall be had to the average rate of assessment on assessed land in the same village or, if there is no such land in the same village, the average rate of assessment on assessed land in the nearest village containing assessed land.

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## PART IV.

### BENGAL.

#### *General requirement as to residence.*

1. (1) A person shall not be qualified to be included in the electoral roll for any territorial constituency unless he has a place of residence in that constituency :

Provided that—

(a) in the case of a Calcutta constituency, the provisions of this paragraph shall be deemed to be complied with in relation to any person if he has a place of residence in Calcutta and a place of business within the constituency ;

(b) in the case of a European constituency, the provisions of this paragraph shall be deemed to be complied with in relation to any person if he is actually employed anywhere in Bengal but is absent from Bengal on leave from his employment.

(2) In this paragraph “a place of residence” means a place where a person ordinarily and actually resides during the greater part of the year.

#### *Qualifications dependent on taxation.*

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if he—

(a) has paid before the expiration of the previous year any sum as tax under the Bengal Motor Vehicles Tax Act, 1932, in respect of that year ; or

- (b) was assessed during the previous year to income tax ; or
- (c) was during the previous year entered in the municipal assessment book or licence register, or any other authorised register maintained by the Corporation of Calcutta, as having paid in respect of that year either directly or indirectly any sum as consolidated rate, tax or licence fee to the corporation ; or
- (d) has paid during and in respect of the previous year municipal or cantonment taxes or fees of not less than eight annas, or road and public works cesses under the Cess Act, 1880, of not less than eight annas, or Chaukidari tax under the Village Chaukidari Act, 1870, of not less than six annas, or union rate under the Bengal Village Self-Government Act, 1919, of not less than six annas.

*Qualifications dependent on property.*

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll of any territorial constituency if at any time during the previous financial or Bengali year he has occupied by virtue of his employment a house in the Province the annual valuation of which is not less than forty-two rupees.

In this paragraph " annual valuation " means the annual rental of the house as ascertained from any accounts of the employer of the person in question which are required by or under any law to be regularly audited or, if the annual valuation is not so ascertainable, one-tenth of the annual remuneration received by the person in question for the employment by virtue of which he occupies it.

*Educational qualification.*

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the matriculation examination of any prescribed university, or an examination prescribed as at least equivalent to any such examination, or if it is so prescribed, any other prescribed examination, not lower than a final middle school examination.

*Qualification by reason of service in His Majesty's forces.*

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

*Additional qualifications for women.*

6. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the

pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces or if her husband possesses the qualifications requisite for the purposes of this paragraph or if she is shown in the prescribed manner to be literate :

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if the words " or if she is shown in the prescribed manner to be literate " were omitted therefrom.

7. In relation to a Calcutta constituency, a husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if—

- (a) he was during the previous year entered in the municipal assessment book as the owner and occupier of any land or building in Calcutta separately numbered and valued for assessment purposes at not less than one hundred and fifty rupees per annum, or as the owner or occupier of any land or building in Calcutta separately numbered and valued for assessment purposes at not less than three hundred rupees per annum and paid during that year his share of the consolidated rate on the land or building ; or
- (b) he has paid during and in respect of the previous year on his sole account and in his own name not less than twenty-four rupees either in respect of the taxes levied under Chapter XI, or in respect of the taxes levied under Chapter XII, of the Calcutta Municipal Act, 1923 ; or
- (c) his name is entered in the municipal assessment book in respect of any land or building in Calcutta in respect of which not less than twenty-four rupees was paid in the previous year in respect of the consolidated rate.

8. In relation to an urban constituency which is not a Calcutta constituency, a husband shall be deemed to possess the qualifications requisite for the said purposes if, during and in respect of the previous year, he paid, in the municipality of Howrah, municipal taxes or fees of not less than three rupees, or, in any other municipal area or cantonment in the Province, municipal or cantonment taxes or fees of not less than one rupee, eight annas.

9. In relation to a rural constituency, a husband shall be deemed to possess the qualifications requisite for the said purposes if, during and in respect of the previous year, he paid not less than one rupee, eight annas in respect of municipal taxes or fees, or not less than one rupee in respect of road and public works cesses under the Cess Act, 1880, or not less than two rupees in respect of Chaukidari tax under the Village Chaukidari Act, 1870, or in respect of union rate under the Bengal Village Self-Government Act, 1919.

10. In relation to any territorial constituency, a husband shall be deemed to possess the qualifications requisite for the said purposes if he either is a



retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces or was assessed in the previous year to income tax, or paid before the expiration of the previous year any sum as tax under the Bengal Motor Vehicles Tax Act, 1932, in respect of that year.

*Special provisions as to Darjeeling general constituency.*

11. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any rural general constituency comprising any part of the Sadar, Kalimpong and Kurseong sub-divisions of the Darjeeling district if that person either—

- (a) has paid during and in respect of the previous year rent of not less than twenty rupees for any land in the Province situate in a municipal area or for any hired building in the Province, or rent of not less than two rupees for any land in the Province not situate in a municipal area ; or
- (b) is the wife of a person who, during and in respect of the previous year, has paid rent of not less than sixty rupees for any land in the Province situate in a municipal area or for any hired building in the Province, or rent of not less than six rupees for any land in the Province not situate in a municipal area.

*Application necessary for enrolment in certain cases.*

12. No person shall by virtue of paragraph three or paragraph four of this Part of this Schedule be included in the electoral roll of any territorial constituency, unless application is made in the prescribed manner by him, or, if it is so prescribed, on his behalf, that he should be so included.

*Special provisions as to Muhammadan women's constituency.*

13. No man shall be included in the electoral roll for, or be entitled to vote at any election in, any Muhammadan constituency specially formed for the election of persons to fill the seats reserved for women.

*Interpretation, &c.*

14. (1) In this Schedule, in relation to Bengal,—

“Calcutta ” means Calcutta as defined in paragraph 11 of section three of the Calcutta Municipal Act, 1923 ;

“ a Calcutta constituency ” means, subject to the provisions of this paragraph with respect to Anglo-Indian constituencies, European constituencies or Indian Christian constituencies, a constituency which comprises any part of Calcutta ;

“ previous year ” means the previous financial year or the previous Bengali year, whichever is appropriate in the particular case ;

“Bengali year” means a year ending on the last day of the Bengali month of Chaitra.

(2) Notwithstanding anything in this paragraph, an Order in Council delimiting territorial constituencies may provide that any Anglo-Indian constituency, European constituency or Indian Christian constituency comprising any part of Calcutta, shall, for all or any of the purposes of this Part of this Schedule, be deemed not to be a Calcutta constituency.

(3) Where property is held or payments are made jointly by, or assessments are made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists, and if it does exist the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorised in that behalf by the family themselves :

Provided that this paragraph shall not apply where members of a joint family have separate accommodation and separate messing, and in any such case any reference in this Part of this Schedule to any property, payment or assessment shall be construed as a reference to each member's share of that property, payment or assessment.

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## PART V.

### THE UNITED PROVINCES.

#### *General requirement as to residence.*

1. (1) A person shall not be qualified to be included in the electoral roll for any territorial constituency unless he is resident in the constituency.

(2) For the purposes of this Part of this Schedule a person shall be deemed to be resident in any area if he ordinarily lives in that area or maintains a dwelling house therein ready for occupation in which he occasionally dwells.

#### *Qualifications dependent on taxation.*

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) was assessed during the previous financial year to income tax ; or
- (b) was, in an area wholly or partly within the constituency in which a municipal tax is in force, assessed in the previous financial year to municipal tax on an income of not less than one hundred and fifty rupees per annum.

#### *Qualifications dependent on property.*

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is the owner or tenant of a

house or building in the constituency the rental value whereof is not less than twenty-four rupees per annum <sup>1</sup>[or, in the case of a member of the scheduled castes, if he is the owner or tenant of a house or building in the constituency the rental value whereof is not less than twelve rupees per annum.]

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) owns land in the constituency on which land revenue of not less than five rupees per annum is payable; or
- (b) owns land in the constituency free of land revenue, if the land revenue nominally assessed on the land for determining the amount of rates payable in respect of the land, either alone or together with any land revenue payable by him as owner of other land in the constituency, amounts to not less than five rupees per annum; or
- (c) is a tenant of land in the constituency in respect of which rent of not less than ten rupees per annum, or rent in kind equivalent to not less than ten rupees per annum, is payable; or
- (d) is an under-proprietor in Oudh of land in the constituency in respect of which under-proprietary rent of not less than five rupees per annum is payable; or
- (e) in the case of a constituency comprising any part of the Hill Pattis of Kumaun, is resident in those Hill Pattis and, in the constituency, either is owner of a fee simple estate in those Hill Pattis, or is assessed to the payment of land revenue or cesses of any amount in those Hill Pattis, or is a Khaikar.

*Educational qualification.*

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the upper primary examination, or an examination which is prescribed as the equivalent thereof.

*Qualification by reason of service in His Majesty's forces.*

6. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

*Special provision as to Shilpkars in the Hill Pattis of Kumaun.*

6. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency comprising any part of the

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<sup>1</sup>These words were added by para. 5 of Part V of the Government of India (Provincial Legislative Assemblies) Order, 1936.

Hill Pattis of Kumaun if he is a Shilpkar resident in a village in those Hill Pattis and is in the prescribed manner selected and designated as their representative by the Shilpkar families of that village.

*Additional qualifications for women.*

8. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

- (a) if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces ; or
- (b) if she is proved in the prescribed manner to be literate ; or
- (c) if her husband possesses the qualifications requisite for the purposes of this paragraph.

9. In relation to any territorial constituency, a husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he—

- (a) is the owner or tenant of a house or building in the constituency, the rental value whereof is not less than thirty-six rupees per annum ; or
- (b) was, in an area in which no house or building tax is in force, assessed in the previous year in the constituency to municipal tax on an income of not less than two hundred rupees per annum ; or
- (c) owns land in the constituency in respect of which land revenue amounting to not less than twenty-five rupees per annum is payable ; or
- (d) owns land in the constituency free of land revenue if the land revenue nominally assessed on the land for determining the amount of rates payable in respect thereof either alone or together with any land revenue payable by him as owner in respect of other land in the constituency, amounts to not less than twenty-five rupees per annum ; or
- (e) is resident in the Hill Pattis of Kumaun and, in the constituency, either owns a free simple estate situate in those Hill Pattis or is assessed to the payment of land revenue or cesses of any amount in those Hill Pattis, or is a Khaikar ; or
- (f) is, in the constituency, a permanent tenure holder or a fixed rate tenant as defined in the Agra Tenancy Act, 1926, or an under-proprietor or occupancy tenant as defined in the Oudh Rent Act, 1886, and is liable as such to rent of not less than twenty-five rupees per annum ; or
- (g) holds in the constituency as a tenant, land in respect of which a rent of not less than fifty rupees per annum or a rent in kind

equivalent to not less than fifty rupees per annum is payable ;  
or

- (h) was assessed in the previous financial year to income tax ; or
- (i) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

*Application necessary for enrolment in certain cases.*

10. (1) No person shall by virtue of paragraph five or sub-paragraph (a) or sub-paragraph (b) of paragraph eight of this Part of this Schedule, or by virtue of her husband being a retired, pensioned or discharged officer, non-commissioned officer or soldier, be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by, or if it is so prescribed, on behalf of, that person, that that person should be so included.

(2) On the preparation of the original electoral roll for any rural constituency or on any revision of the electoral roll for a rural constituency within three years from the commencement of Part III of this Act, no person shall by virtue of her husband possessing any of the other qualifications requisite for the purposes of the said paragraph eight be included in the electoral roll unless application is made in the prescribed manner by her, or if it is so prescribed, on her behalf, that she should be so included.

*Interpretation, etc.*

11. (1) In this Schedule, in relation to the United Provinces—

- “owner” does not include a mortgagee or a lessee, and “own” shall be construed accordingly ;
- “tenant” as respects any land in a rural area means a tenant as defined in the Agra Tenancy Act, 1926, or the Oudh Rent Act, 1886, as the case may be, and does not include a sub-tenant, and as respects any house or building means a person who occupies it on payment of rent, or in the case of a house, not situate in military or police lines, a person who occupies it rent free by virtue of any office, service or employment ;
- “under-proprietor” means an under-proprietor as defined in the Oudh Rent Act, 1886 ;
- “Khaikar” means a person recorded as such in the records of rights of land in the Hill Pattis of Kumaun ;
- “building” means a building as defined in the United Provinces Municipalities Act, 1916 ;
- “rental value” means the value of a house or building based on the amount of annual rent ;
- “municipal tax” and “house or building tax” mean the taxes respectively known by those names imposed under the United Provinces

Municipalities Act, 1916, the United Provinces Town Areas Act, 1914, and the Cantonments Act, 1924 ;

“ urban area ” means a municipality or notified area as defined in subsection (9) of section two, and subsection (2) of section three hundred and thirty-seven of the United Provinces Municipalities Act, 1916, or a town area as defined in the United Provinces Town Areas Act, 1914, or a cantonment ;

“ rural area ” means an area which is not an urban area.

(2) Where property is held or payments are made jointly by, or assessments are made jointly on, the members of a joint family or joint tenancy, the family or tenancy shall be adopted as the unit for deciding whether under this Part of this Schedule the requisite qualification exists, and if it does exist, the person qualified shall be, in the case of a joint Hindu family, the manager thereof or, if there is no manager, the member nominated in that behalf by the majority of the family, and in other cases the member nominated in that behalf by the family or tenancy concerned.

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## PART VI.

### THE PUNJAB.

#### *General requirements as to residence.*

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he is resident in the constituency.

For the purposes of this Part of this Schedule proof that a person owns a family dwelling-house or a share in a family dwelling-house in a constituency and that that house has not during the twelve months preceding the prescribed date been let on rent either in whole or in part shall be sufficient evidence that that person is resident in the constituency.

#### *Qualifications dependent on taxation.*

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for a territorial constituency if during the previous financial year either—

- (a) he was assessed to income tax, or was in the Province assessed in respect of any direct municipal or direct cantonment tax to an amount of not less than fifty rupees ; or
- (b) he was in the Province assessed to haisiyat or profession tax to an amount of not less than two rupees, or, in districts in which no such tax exists, to any other direct tax imposed under the Punjab District Boards Act to an amount of not less than two rupees.

*Qualifications dependent on property, &c.*

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he either—

- (a) is the owner of land in the Province assessed to land revenue of not less than five rupees per annum ; or
- (b) is a tenant with a right of occupancy as defined in Chapter II of the Punjab Tenancy Act, 1887, in respect of land in the Province assessed to land revenue of not less than five rupees per annum ;  
or
- (c) is an assignee of land revenue in the Province amounting to not less than ten rupees per annum ; or
- (d) is a tenant of not less than six acres of irrigated land in the constituency, or of not less than twelve acres of unirrigated land in the constituency ; or
- (e) has throughout the twelve months immediately preceding the prescribed date owned immovable property in the Province of the value of not less than two thousand rupees or of an annual rental value of not less than sixty rupees, not being land assessed to land revenue ; or
- (f) has throughout the twelve months preceding the prescribed date occupied as tenant in the constituency immovable property of an annual rental value of not less than sixty rupees, not being land assessed to land revenue ; or
- (g) is a zaildar, inamdar, sufedposh or lambardar in the constituency :

Provided that the provisions of sub-paragraph (d) of this paragraph shall be deemed to be complied with in the case of a person who is the tenant of both irrigated and unirrigated land in the constituency if the sum of the area of that irrigated land and half the area of that unirrigated land is not less than six acres.

*Educational qualification.*

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have attained the primary or an equivalent or higher educational standard.

*Qualification by reason of service in His Majesty's forces.*

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier in His Majesty's regular military forces.

*Additional qualification for women.*

6. Subject as aforesaid a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is

the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces, or if she is shown in the prescribed manner to be literate or if her husband possesses the qualifications requisite for the purposes of this paragraph.

7. A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he either—

- (a) during the previous financial year was assessed to income tax, or was assessed in the Province in respect of any direct municipal or cantonment tax to an amount of not less than fifty rupees ; or
- (b) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces ; or
- (c) has throughout the twelve months preceding the prescribed date owned immovable property in the province of the value of not less than four thousand rupees or of an annual rental value of not less than ninety-six rupees, not being land assessed to land revenue ; or
- (d) has throughout the twelve months preceding the prescribed date occupied as a tenant immovable property in the constituency of an annual rental value of not less than ninety-six rupees, not being land assessed to land revenue ; or
- (e) is the owner of land in the Province assessed to land revenue of not less than twenty-five rupees per annum ; or
- (f) is the assignee of land revenue in the Province amounting to not less than fifty rupees per annum ; or
- (g) is a tenant or lessee under the terms of a lease for a period of not less than three years of Crown land in the constituency for which an annual rent of not less than twenty-five rupees is payable ; or
- (h) is a tenant with a right of occupancy as defined in Chapter II of the Punjab Tenancy Act, 1887, in respect of land assessed to land revenue of not less than twenty-five rupees per annum :

Provided that for the purposes of sub-paragraph (g) of this paragraph, where the amount payable by any tenant or lessee is assessed from harvest to harvest, the annual rent payable by him shall be deemed to be the annual average of the amounts payable by him in the three years preceding that in which the prescribed date falls.

*Special qualification for scheduled castes.*

8. Subject as aforesaid a person who is a member of the scheduled castes shall also be qualified to be included in the electoral roll for any territorial constituency if he either—

- (a) is shown in the prescribed manner to be literate ; or



- (b) has throughout the twelve months preceding the prescribed date owned immovable property in the Province of a value of not less than fifty rupees, not being land assessed to land revenue, or has throughout that period owned malba of a house in the Province of not less than that value ; or
- (c) has, throughout the twelve months preceding the prescribed date, occupied as tenant immovable property in the constituency of an annual rental value of not less than thirty-six rupees.

*Application necessary for enrolment in certain cases.*

9. No person shall, by virtue of paragraph four, paragraph six or subparagraph (a) of paragraph eight of this Part of this Schedule, be included in the electoral roll for any territorial constituency unless application is made by him in the prescribed manner that he should be so included.

*Interpretation, etc.*

10. (1) In this Schedule, in relation to the Punjab—

- “annual rental value” in relation to immovable property means the amount for which the property together with its appurtenances and furniture, if any, is actually let, or may reasonably be expected to let, from year to year ;
- “land revenue” means land revenue as defined in sub-section (6) of section three of the Punjab Land Revenue Act, 1887, and, in the case of fluctuating land revenue or land revenue assessed on land subject to river action, the annual amount thereof shall be taken to be the average amount of land revenue paid during the three agricultural years preceding that in which the prescribed date falls ;
- “land records” means attested records of rights or attested annual records of rights maintained under Chapter IV of the Punjab Land Revenue Act, 1887, and includes an order finally sanctioning a mutation duly passed under that Chapter ;
- “agricultural year” means a year ending on the thirtieth day of September ;
- “owner” does not include a mortgagee ;
- “tenant” in relation to agricultural land means a tenant as defined in the Punjab Tenancy Act, 1887, and in relation to other property means a person who holds that property by lease and is, or, but for a special contract, would be, liable to pay rent therefor, and in relation to a house not situate in military or police lines includes any person occupying the house rent free by virtue of any office, service or employment ;

“ zaildar,” “ inamdar,” “ sufedposh ” and “ lambardar ” mean respectively persons appointed as such in accordance with rules for the time being in force under the Punjab Land Revenue Act, 1887, and do not include a substitute appointed temporarily for any such person.

(2) In computing for the purposes of this Part of this Schedule the period during which a person has owned any immovable property, any period during which it was owned by a person from whom he derives title by inheritance shall be taken into account.

(3) Any reference to immovable property, not being land assessed to land revenue, includes a reference to any building situated on land assessed to land revenue.

(4) Where property is held or payments are made by, or assessments are made on, the members of a Hindu joint family, and the respective shares of the members of the family are not specified in the land records or in any municipal or cantonment record or in a decree of a civil court, as the case may be, the family shall be adopted as the unit for deciding whether the requisite qualification exists, and, if it does exist, the person qualified shall be the manager of the family.

(5) Subject to the provisions of the last preceding sub-paragraph, any reference in this Schedule to land assessed to land revenue, to other immovable property, to a tenancy or lease of land assessed to land revenue or to assigned land revenue shall, in relation to any persons who are co-sharers in such land, property, tenancy or lease, or land revenue, be construed as a reference to the respective shares of those persons :

Provided that the share of any person under the age of twenty-one years shall, if his father is alive and a co-sharer, be deemed to be added to the share of his father, and, if his father is dead and his eldest surviving brother is a co-sharer, be deemed to be added to the share of that brother.

(6) Not more than one person shall be qualified in respect of the occupation of a building occupied in common by two or more persons and any question which of those persons is to be qualified shall be determined in the prescribed manner.

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## PART VII.

### BIHAR.

#### *General requirement as to residence.*

1. (1) No person shall be qualified to be included in the electoral roll for a territorial constituency unless he resides in the constituency.

(2) A person shall be deemed to reside within a constituency if he ordinarily lives therein, or has his family dwelling therein which he occasionally

occupies, or maintains therein a dwelling-house ready for occupation which he occasionally occupies.

*Qualifications dependent on taxation.*

2. Subject to the provisions of Part I of this Schedule and to any over-riding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for a territorial constituency if he was assessed during the previous financial year to income tax or was, in the previous financial year, assessed to an aggregate amount of not less than one rupee eight annas in respect of municipal tax or is assessed, otherwise than in the Santal Parganas, to chaukidari tax of an annual amount of not less than nine annas <sup>1</sup>[or, in the case of a member of the Scheduled castes, of an annual amount of not less than six annas].

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if there were substituted for the reference to nine annas a reference to twelve annas.

*Qualifications dependent on property.*

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll of any territorial constituency if he either—

- (a) occupies land or buildings situate in the notified area of Jamshedpur in respect of which he is liable to pay an annual rent of not less than twenty-four rupees ; or
- (b) holds land in the Province, not situated in the notified area of Jamshedpur or an area in which municipal tax or chaukidari tax is levied, for which he is liable to pay a rent of not less than six rupees per annum or a local cess of not less than three annas :

Provided that in relation to land within the Santal Parganas this paragraph shall have effect as if there were substituted for the reference to six rupees, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, a reference to five rupees, and thereafter a reference to three rupees eight annas.

*Educational qualification.*

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved, in the prescribed manner, to have passed the matriculation examination of any prescribed university or an examination prescribed as at least equivalent to any such examination or, if it is so prescribed, any other prescribed examination not lower than a final middle school examination.

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<sup>1</sup> These words were inserted by para. 7 of Part VII of the Government of India (Provincial Legislative Assemblies) Order, 1936.

*Qualification by reason of service in His Majesty's forces.*

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

*Additional qualification for women.*

6. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the pensioned widow or pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces, or if her husband possesses the qualifications requisite for the purposes of this paragraph, or if she is shown in the prescribed manner to be literate :

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if the words " or if she is shown in the prescribed manner to be literate " were omitted therefrom.

7. A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if—

- (a) in the previous financial year he was assessed to income tax ; or
- (b) he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces ; or
- (c) he was in the previous financial year assessed in the Province to an aggregate amount of not less than three rupees in respect of municipal tax ; or
- (d) he is assessed in the Province, otherwise than in the Santal Parganas, to an annual sum of not less than two rupees eight annas in respect of chaukidari tax ; or
- (e) he occupies land or buildings situate in the notified area of Jamshedpur in respect of which he is liable to pay rent of not less than one hundred and forty-four rupees per annum ; or
- (f) he holds land in the Province, not situated in the notified area of Jamshedpur or an area in which municipal tax or chaukidari tax is levied, in respect of which he is liable to pay rent of not less than twenty-four rupees per annum or a local cess of not less than twelve annas.

*Special provisions as to Muhammadan women's constituency.*

8. No man shall be included in the electoral roll for, or be entitled to vote at any election in, any Muhammadan constituency specially formed for the election of a person to fill the seat reserved for women.

*Interpretation, etc.*

## 9. (1) In this Schedule, in relation to Bihar—

“municipal tax” means a tax or rate levied in a municipality constituted under the Bihar and Orissa Municipal Act, 1922, in an area in respect of which a notification has issued under section three hundred and eighty-eight of that Act, or in a cantonment, or in the area administered by the Patna Administration Committee ;

“chaukidari tax” means any tax levied under the Village Chaukidari Act, 1870, the Chota Nagpur Rural Police Act, 1914, or section thirty of the Bihar and Orissa Village Administration Act, 1922.

(2) Where property is held or payments are made jointly by, or assessments are made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists and, if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorised in that behalf by the family themselves.

(3) Where property is held or payments are made jointly by, or assessments are made jointly on, persons other than the members of a joint family, all such persons shall be regarded as a single person for deciding whether the requisite qualification exists, and if it does exist, then, subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, one and one only of those persons shall be qualified and the person to be qualified shall be selected in the prescribed manner.

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PART VIII.

## THE CENTRAL PROVINCES AND BERAR.

*General requirements as to residence.*

1. (1) No person shall be qualified to be included in the electoral roll for a territorial constituency unless, in the case of a rural constituency, he has a place of residence in the constituency, and, in the case of an urban constituency, he has a place of residence in, or within two miles from the boundary of, the constituency.

(2) For the purposes of this Part of this Schedule a person shall be deemed to have a place of residence in an area if and only if he either—

(a) has actually dwelt in a house within the area for not less than one hundred and eighty days in the aggregate during the previous financial year ; or

(b) he has maintained a house within the area for an aggregate period of not less than one hundred and eighty days during that year

as a dwelling for himself in charge of his dependants or servants, and has visited that house during that year.

*Qualifications dependent upon taxation.*

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for a territorial constituency if in the previous financial year he either—

- (a) was assessed to income tax ; or
- (b) was, in an urban area in the Province in which a municipal tax based on haisiyat is imposed, assessed to such a tax on a haisiyat of not less than seventy-five rupees.

*Qualifications dependent on property, etc.*

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll of a territorial constituency if he either---

- (a) holds, in the Central Provinces, as a proprietor or thekadar, an estate or mahal the land revenue or kamil jama of which is not less than two rupees ; or
- (b) holds, in the Central Provinces, as a proprietor or thekadar in proprietary right, sir land or khudkasht, or, as a malik makbuza, raiyat or tenant, agricultural land, being sir land, khudkasht or agricultural land, the assessed or assessable land revenue or the rent of which is not less than two rupees ; or
- (c) holds, in Berar, in other than tenancy right, agricultural land of which the assessed or assessable land revenue is not less than two rupees ; or
- (d) is, in an urban area in the Province, the owner or tenant of a building, the annual rental value of which is not less than six rupees ; or
- (e) is a watandar patel or a watandar patwari holding office, or a registered deshmukh or deshbandia or a lambardar.

*Educational qualification.*

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved, in the prescribed manner, to have passed an examination which qualifies for admission to a course of study for a degree of the Nagpur University, or an examination prescribed as at least equivalent thereto, or, if it is so prescribed, any other prescribed examination not lower than a final middle school examination :

Provided that, in relation to a constituency in Berar, the foregoing provisions of this paragraph shall be deemed to be complied with in relation to

any person if he is proved in the prescribed manner to have passed any examination in the State of Hyderabad prescribed as at least equivalent to an examination the passing of which qualifies persons under those provisions.

*Qualification by reason of service in His Majesty's forces and the forces of His Exalted Highness the Nizam of Hyderabad.*

5. (1) Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

(2) Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency in Berar if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of the regular forces of His Exalted Highness the Nizam of Hyderabad, or a retired, pensioned or discharged officer or man of the Hyderabad State Police.

*Additional qualification for women.*

6. (1) Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

- (a) if she is the pensioned widow or pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces ;
- (b) if she is proved in the prescribed manner to be literate or to be the holder of a primary school certificate ; or
- (c) if her husband possesses the qualifications requisite for the purposes of this paragraph.

(2) Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency in Berar if she is the pensioned widow or pensioned mother of a person who was an officer, non-commissioned officer or soldier of the regular forces of His Exalted Highness the Nizam of Hyderabad, or an officer or man of the Hyderabad State Police.

7. (1) A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he either—

- (a) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces ; or
- (b) holds, in the Central Provinces, as a proprietor or thekadar, an estate or mahal the land revenue or kamil jama of which is not less than thirty-five rupees ; or
- (c) holds, in the Central Provinces, as a proprietor or thekadar in proprietary right, sir land or khudkasht, or as a malik makbuza, raiyat or tenant, agricultural land, being sir land, khudkasht or agricultural land, the assessed or assessable land revenue or rent of which is not less than thirty-five rupees ; or .

- (d) holds, in Berar, in other than tenancy right, agricultural land of which the assessed or assessable land revenue is not less than thirty-five rupees ; or
- (e) is, in an urban area, the owner or tenant of a building of which the annual rental value is not less than thirty-six rupees ; or
- (f) was, in an urban area in which a municipal tax based on haisiyat is imposed, assessed in the previous financial year to such a tax on a haisiyat of not less than four hundred rupees.

(2) In relation to any territorial constituency in Berar, a husband shall also be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of the regular forces of His Exalted Highness the Nizam of Hyderabad, or a retired, pensioned or discharged officer or man of the Hyderabad State Police.

*Additional qualification for members of scheduled castes.*

8. Subject as aforesaid, a member of a scheduled caste shall also be qualified to be included in the electoral roll for any territorial constituency if he is a kotwar, a jaglia, or a village mahar holding office.

*Application necessary for enrolment in certain cases.*

9. No person shall, by virtue of paragraph four of this Part of this Schedule, or by virtue of being a pensioned widow or mother, or of being literate or the holder of a primary school certificate, or of being the wife of an officer, non-commissioned officer, soldier or man of any force, be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by him or, if it is so prescribed, on his behalf, that he should be so included.

*Interpretation, etc.*

10. (1) In this Schedule, in relation to the Central Provinces and Berar—

- “ building ” means any structure or enclosure, whether used as a human dwelling or otherwise, and includes a part of a building ;
- “ estate,” “ mahal,” “ malik makbuza,” “ kamil jama,” “ sir land ” and “ khudkasht ” have the meanings respectively assigned to them in section two of the Central Provinces Land Revenue Act, 1917 ;
- “ estate or mahal ” includes a part of an estate or a mahal ;
- “ lambardar ” means a lambardar appointed under the provisions of the Central Provinces Land Revenue Act, 1917 ;
- “ land revenue ” means land revenue as defined in section fifty-six of the Central Provinces Land Revenue Act, 1917, and in section forty-nine of the Berar Land Revenue Code, 1928 ;



- <sup>1</sup>["municipal tax" means a tax imposed under the provisions of the Central Provinces Municipalities Act, 1922, or of that Act as applied to Berar ;]
- "proprietor" includes an inferior proprietor and a plot proprietor, but does not include a transferee of proprietary rights in possession, or a mortgagee with possession ;
- "raiyyat" means the holder of a survey number as defined in sub-section (18) of section two of the Central Provinces Land Revenue Act, 1917, and includes the holder of land recorded in the land records maintained by the Provincial Government as milkiyat sarkar ;
- "registered deshmukh or deshpandia" means a person, being a deshmukh or deshpandia, whose name is recorded in the registers of political pensions maintained by the Deputy Commissioners in Berar as the holder of a pension or share of a pension ;
- "rental value," in relation to immovable property, means the amount for which the property, together with its appurtenances and furniture, if any, is actually let, or may reasonably be expected to be let, from year to year ;
- "tenant," in relation to agricultural land, means a tenant as defined in sub-section (11) of section two of the Central Provinces Tenancy Act, 1920, but does not include a sub-tenant, and in relation to a house not situate in military or police lines includes any person occupying the house rent free by virtue of any office, service or employment ;
- "thekadar" includes a gaontia and a protected headman ;
- "hold" in relation to land or an estate or mahal, means to be recorded in the records maintained under Chapter V of the Central Provinces Land Revenue Act, 1917, or Chapter X of the Berar Land Revenue Code, 1928, or, in the case of the Melghat Taluq of the Amraoti District, in the land records prescribed by the Provincial Government, as the person in possession of the land, estate or mahal ;
- "urban area" means a municipality, notified area or cantonment, and includes the Government gun carriage factory estate at Jubbulpore and any prescribed railway settlements ;
- "watandar patel" and "watandar patwari" mean respectively a patel and a patwari appointed under section five of the Berar Patels and Patwaris Law, 1900.

(2) For the purposes of this Part of this Schedule ante-alienation tenants, as defined in section seventy-two of the Berar Land Revenue Code, 1928, and section forty of the Berar Alienated Villages Tenancy Law, 1921, permanent tenants as defined in section forty-seven of the Berar Alienated Villages

<sup>1</sup> This definition was inserted by para. 4 of Part VIII of the Government of India (Provincial Legislative Assemblies) Order, 1936.

Tenancy Law, 1921, and tenants of antiquity as defined in section seventy-three of the Berar Land Revenue Code, 1928, shall be deemed to hold agricultural land in other than tenancy right.

(3) Subject to the provisions of the next succeeding sub-paragraph, the provisions of this Part of this Schedule shall have effect in relation to any persons who are co-sharers in, or in a tenancy or lease of, land or other immovable property as if the respective shares of those persons in the land, property, tenancy or lease were held separately.

(4) Where property is held or payments are made jointly by the members of a joint family or a tax is assessed jointly on the members of a joint family the family shall be adopted as the unit for deciding whether the requisite qualification exists, and if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorised in that behalf by the family themselves.

(5) Any reference in this Part of this Schedule to a retired, pensioned or discharged officer or man of the Hyderabad State Police shall be deemed not to include a reference to any person who has been dismissed or discharged from the police for disciplinary reasons.

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## PART IX.

### ASSAM.

#### *General requirement as to residence.*

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he has a place of residence in the constituency, and a person shall be deemed to have a place of residence in a constituency if he ordinarily lives in the constituency or has his family dwelling place in the constituency and occasionally occupies it:

Provided that in relation to the European constituency the provisions of this paragraph shall be deemed to be complied with in relation to any person if he is actually employed anywhere in Assam but is absent from Assam on leave from his employment.

#### *Qualifications dependent on taxation.*

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if, in the previous financial year, he either—

(a) was assessed to income tax; or

(b) was in the constituency assessed in respect of municipal or cantonment rates or taxes to an aggregate amount of not less than

two rupees or, in the Sylhet municipality, of not less than one rupee eight annas, or to a tax of not less than one rupee in a Small Town, or, in the district of Sylhet, the district of Cachar or the district of Goalpara, to a tax of not less than eight annas under the Village Chaukidari Act, 1870.

*Qualifications dependent on property.*

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if, in the constituency, he either—

- (a) is the owner of land the land revenue on which has been assessed or is assessable at not less than seven rupees eight annas per annum ; or
- (b) is liable to pay a local rate of not less than eight annas per annum ; or
- (c) throughout the previous financial or previous Bengali year held from a landlord land in any of the following districts, that is to say, Lakhimpur, Sibsagar, Darrang, Nowgong or Kamrup, or in the Garo Hills, and paid to the landlord rent to the value of not less than seven rupees eight annas in respect of that land :

Provided that for the purposes of this paragraph land situate, and local rates levied, in the districts of Sylhet, Cachar and Goalpara shall be left out of account.

*Educational qualification.*

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the middle school leaving certificate examination or any other examination prescribed as at least equivalent thereto.

*Qualification by reason of service in His Majesty's forces.*

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer, or soldier of His Majesty's regular military forces or the Assam Rifles.

*Additional qualification for women.*

6. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the pensioned widow or pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces or the Assam Rifles, or if she is proved in the prescribed manner to be literate,

or if her husband possesses the qualifications requisite for the purposes of this paragraph.

7. A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he—

- (a) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces or the Assam Rifles ; or
- (b) was in the previous financial year assessed to income tax ; or
- (c) was in the previous financial year assessed in the constituency in respect of municipal or cantonment rates or taxes—
  - (i) in the Nowgong municipality, to not less than two rupees ; or
  - (ii) in the Sylhet municipality, to not less than one rupee eight annas ; or
  - (iii) elsewhere in the Province, to not less than three rupees ; or
- (d) was in the constituency assessed in the previous financial year to a tax of not less than one rupee in a Small Town ; or
- (e) was in the constituency assessed in the previous financial year in the district of Sylhet, the district of Cachar or the district of Goalpara to a tax of not less than one rupee under the Village Chaukidari Act, 1870 ; or
- (f) elsewhere than in the said districts, is the owner of land in the constituency, the land revenue on which has been assessed or is assessable at not less than fifteen rupees per annum ; or
- (g) is liable to pay a local rate in the constituency of not less than one rupee per annum.

*Application necessary for enrolment in certain cases.*

8. No person shall, by virtue of paragraph six of this Part of this Schedule, be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by her, or, if it is so prescribed, on her behalf, that she should be so included :

Provided that, except in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall, in relation to women qualified by virtue of their husbands' qualifications, have effect only where the husband's qualification is that mentioned in sub-paragraph (a) of paragraph seven of this Part of this Schedule.

*Special provisions as to seat reserved for women.*

9. The following provisions shall have effect in relation to any constituency specially formed for the election of persons to fill the seat reserved for women—

- (a) no man shall be included in the electoral roll for the constituency, or be entitled to vote at any election therein ;

1\*                      \*                      \*                      \*                      \*                      \*

<sup>2</sup>[*Special provisions as to Shillong.*

9A. In the case of any territorial constituency comprising any part of Shillong, any reference in this part of this Schedule to "the constituency" shall be construed as including a reference to so much of the areas under the jurisdiction of the Shillong Municipal Board and the Shillong Cantonment Authority as is not part of British India and any reference to municipal or cantonment rates or taxes shall be construed as including a reference to any such rates or taxes assessed by or paid to that Board or that Authority in the exercise of any jurisdiction exercised by them in relation to areas outside British India.]

*Special provisions as to backward areas and backward tribes.*

10. No person who is entitled to vote in the election of a person to fill any of the seats to be filled by representatives of backward areas or backward tribes, or is entitled to be included in the electoral roll for any constituency formed for the purpose of filling any such seat, shall be included in the electoral roll for any territorial constituency in the province, other than any constituency specially formed for the election of persons to fill the seat reserved for women.

*Interpretation, etc.*

11. (1) In this Schedule, in relation to Assam—

"Small Town" means a notified area constituted under Chapter XII of the Assam Municipal Act I of 1923 ;

"Bengali year" means a year ending on the last day of the Bengali month of Chaitra ;

"local rate" means the local rate assessed under the Assam Local Rates Regulation, 1879 ;

"landlord" means a person under whom another person holds land immediately, but does not include the Government ;

"rent" includes rent in kind or partly in kind.

(2) Where property is held or payments are made jointly by, or assessments are made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the necessary qualification exists, and if it does exist the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorised in that behalf by the family themselves :

Provided that any other member of any such family shall also be qualified if the proportion of the joint property, payment or assessment which corresponds with his share therein would be sufficient for him to be qualified if he held it separately.

<sup>1</sup> Sub-paragraph (b) was omitted by para. 5 of Part IX of the Government of India (Provincial Legislative Assemblies) Order, 1936.

<sup>2</sup> The heading and the paragraph were inserted, *ibid.*

## PART X.

## THE NORTH WEST FRONTIER PROVINCE.

*General requirement as to residence.*

1. No person shall be qualified to be included in the electoral roll for any territorial constituency unless he is resident in the constituency.

For the purposes of this Part of this Schedule proof that a person or, in the case of a woman, her husband owns a family dwelling-house or a share in a family dwelling-house in a constituency and that that house has not during the twelve months preceding the prescribed date been let on rent either in whole or in part shall be sufficient evidence that that person is resident in the constituency.

*Qualifications dependent on taxation.*

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if during the previous financial year, he was either—

- (a) assessed to income tax ; or
- (b) assessed in the Province in respect of any direct municipal or cantonment tax to an amount of not less than fifty rupees ; or
- (c) in the case of a rural constituency, assessed to district board tax of not less than two rupees.

*Qualifications dependent on rights in property, etc.*

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if, in the Province, he either—

- (a) owned throughout the twelve months preceding the prescribed date immovable property of the value of not less than six hundred rupees, not being land assessed to land revenue ; or
- (b) has for the twelve months preceding the prescribed date occupied as a tenant immovable property of an annual rental value of not less than forty-eight rupees, not being land assessed to land revenue ; or
- (c) is the owner of not less than six acres irrigated land or not less than twelve acres unirrigated land or of land assessed to land revenue of not less than five rupees per annum ; or
- (d) is the assignee of land revenue amounting to not less than ten rupees per annum ; or
- (e) has been for the whole of the preceding fasli year the tenant of not less than six acres of irrigated land or not less than twelve acres unirrigated land ; or
- (f) is a zaildar, inamdar or lambardar :

Provided that for the purposes of sub-paragraph (c) and sub-paragraph (e) of this paragraph a person shall be deemed to own or, as the case may be, to have been the tenant of, at least six acres of irrigated land if he owns, or, as the case may be, was the tenant of, irrigated and unirrigated land and the sum of the area of that irrigated land and half the area of that unirrigated land is not less than six acres.

*Educational qualification.*

4. Subject as aforesaid, a person shall also be qualified to be included—

- (a) in the electoral roll for any urban constituency, if he is proved in the prescribed manner to have passed a middle school examination or any other examination prescribed as at least equivalent to that examination ;
- (b) in the electoral roll for a rural constituency, if he is proved in the prescribed manner to have passed the primary (fourth class) examination or any other examination prescribed as at least equivalent to that examination.

*Qualification by reason of service in His Majesty's forces.*

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

*Additional qualification for women.*

6. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces, or if her husband possesses the qualifications requisite for the purposes of this paragraph or if she is shown in the prescribed manner to be literate :

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if the words " or if she is shown in the prescribed manner to be literate " were omitted therefrom.

7. A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if either—

- (a) he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces ; or
- (b) he has an income of at least forty rupees per month ; or
- (c) he was during the previous financial year assessed to income tax ; or
- (d) in relation to an urban constituency, he was, during the previous financial year, assessed in the Province in respect of any direct

municipal or cantonment tax to an amount of not less than fifty rupees ; or

- (e) in relation to a rural constituency, he was during the preceding financial year assessed in the Province in respect of any cess, rate or tax to an amount of not less than four rupees per annum payable to the district board ; or
- (f) he owned throughout the twelve months preceding the prescribed date immovable property in the Province of the value of not less than six hundred rupees, not being land assessed to land revenue ; or
- (g) he occupied as a tenant throughout the twelve months preceding the prescribed date immovable property in the Province of an annual rental value of not less than forty-eight rupees, not being land assessed to land revenue ; or
- (h) he is the owner of land in the Province assessed to land revenue of not less than ten rupees per annum ; or
- (i) he is an assignee of land revenue in the Province amounting to not less than twenty rupees per annum ; or
- (j) he is a tenant or lessee, under the terms of a written lease for a period of not less than three years, of land in the Province assessed to land revenue of not less than ten rupees per annum ; or
- (k) he is a tenant with a right of occupancy, as defined in Chapter II of the Punjab Tenancy Act, 1887, in respect of land in the Province assessed to land revenue of not less than ten rupees per annum.

*Application necessary for enrolment in certain cases.*

8. No person shall, by virtue of paragraph four or paragraph six of this Part of this Schedule, be included in the electoral roll for any territorial constituency unless application is made by him in the prescribed manner that he should be so included.

*Interpretation, etc.*

9. (1) In this Schedule, in relation to the North-West Frontier Province—

“ annual rental value,” in relation to immovable property, means the amount for which the property, together with its appurtenances and furniture, if any, is actually let, or may reasonably be expected to be let, from year to year ;

“ fasli year ” means a year ending on the thirtieth day of September ;

“ land revenue ” means land revenue as defined in sub-section (6) of section three of the Punjab Land Revenue Act, 1887, and, in the case of fluctuating land revenue or land revenue assessed on land subject to river action, the annual amount thereof shall be taken to be the average amount paid during the three years preceding the prescribed date ;



“zaildar,” “inamdar” and “lambardar” mean respectively persons appointed as such in accordance with rules for the time being in force under the Punjab Land Revenue Act, 1887, and do not include a substitute appointed temporarily for any such person ;  
 “tenant” in relation to agricultural land means a tenant as defined in the Punjab Tenancy Act, 1887, and in relation to other property, means a person who holds that property by lease and is, or, but for a special contract, would be, liable to pay rent therefor, and in relation to a house not situate in military or police lines includes any person occupying the house rent free by virtue of any office, service or employment.

(2) In computing for the purposes of this Part of this Schedule the period during which a person has owned any immovable property, any period during which it was owned by a person from whom he derives title by inheritance shall be taken into account.

(3) Any reference to immovable property, not being land assessed to land revenue, includes a reference to any building situated on land assessed to land revenue.

(4) Where property is held or payments are made jointly by, or assessments are made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists, and, if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorised in that behalf by the family themselves.

(5) Subject to the provisions of the last preceding sub-paragraph, any reference in this Schedule to land assessed to land revenue, to other immovable property, to a tenancy or lease of land assessed to land revenue or to assigned land revenue, shall, in relation to any persons who are co-sharers in such land, property, tenancy or lease, or land revenue, be construed as a reference to the respective shares of those persons :

Provided that the share of any person under the age of twenty-one years shall, if his father is alive and a co-sharer, be deemed to be added to the share of his father, and, if his father is dead and his eldest surviving brother is a co-sharer, be deemed to be added to the share of that brother.

## PART XI.<sup>1</sup>

### ORISSA.

#### *General requirements as to residence.*

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he is resident in the constituency, and a person shall

<sup>1</sup> In this Part references to the Vizagapatnam district, the sub-division of Angul and Khondmals sub-division shall be construed as references to the Koraput district, the Angul district and the Khondmals district respectively ; see para. 4 of Pt. XI of the Government of India (Provincial Legislative Assemblies) Order, 1936.

be deemed to be resident within a constituency if he ordinarily lives therein or has his family dwelling therein which he occasionally occupies, or maintains therein a dwelling-house ready for occupation which he occasionally occupies.

*Qualifications applicable to all territorial constituencies.*

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if in the previous financial year he was assessed to income tax, or was assessed to an aggregate amount of not less than one rupee, eight annas, in respect of municipal taxes.

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved, in the prescribed manner, to have passed the matriculation examination of any prescribed university or an examination prescribed as at least equivalent to any such examination, or, if it is so prescribed, any other prescribed examination not lower than a final middle school examination.

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

5. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

(a) if she is the pensioned widow or pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces ; or

(b) if her husband either is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces, or in the previous financial year was assessed to income tax or to an aggregate sum of not less than three rupees in respect of municipal taxes ; or

(c) if she is shown in the prescribed manner to be literate :

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if sub-paragraph (c) were omitted therefrom.

*Special provisions as to the districts of Cuttack, Puri, Balasore and the sub-division of Angul.*

6. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for a constituency situated wholly or partly in the

districts of Cuttack, Puri and Balasore and the sub-division of Angul if he either—

- (a) is assessed to chaukidari tax of an annual amount of not less than nine annas <sup>1</sup>[or, in the case of a member of the scheduled castes, of not less than six annas] ; or
- (b) holds land in the Province, not situated in a municipality or an area in which chaukidari tax is levied, for which he is liable to pay rent or land revenue of not less than two rupees per annum or a local cess of not less than one anna :

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if there were substituted for the reference to nine annas a reference to twelve annas.

7. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any such constituency as is mentioned in the last preceding paragraph if she is the wife of any person who either—

- (a) is assessed to chaukidari tax of an annual amount of not less than two rupees, eight annas ; or
- (b) holds land in the Province, not situated in a municipality or in an area in which chaukidari tax is levied, for which he is liable to pay rent or land revenue of not less than sixteen rupees per annum or local cess of not less than eight annas.

*Special provisions as to the districts of Ganjam and Vizagapatam and the Khondmals sub-division.*

8. Subject as aforesaid, a person, not being a member of a backward tribe, shall also be qualified to be included in the electoral roll for a constituency situated wholly or partly in the districts of Ganjam and Vizagapatam or in the Khondmals sub-division—

- (a) if in either of those districts or in that sub-division he holds land, not situate in a municipality, in respect of which he is liable to pay rent or land revenue of not less than two rupees per annum ; or
- <sup>2</sup>[(b) if he is a member of the scheduled castes, and is a village servant, whether hereditary or not ; or]
- <sup>3</sup>[c] without prejudice to the generality of the foregoing provisions, if, being a woman, she is the wife of a person who in either of those districts or in that sub-division holds land, not situate in a municipality, in respect of which he is liable to pay rent or land revenue of not less than sixteen rupees per annum.

<sup>1</sup> These words were inserted by para. 7 of Part XI of the Government of India (Provincial Legislative Assemblies) Order, 1936.

<sup>2</sup> This sub-paragraph was inserted, *ibid.*

<sup>3</sup> The original sub-paragraph (b) was re-lettered (c), *ibid.*

*Special provision as to the district of Sambalpur.*

9. Subject as aforesaid, a person shall be qualified to be included in the electoral roll for any constituency situated wholly or partly in the district of Sambalpur if, in that district, he either—

- (a) holds land, not situated in a municipality or a sanitation area, for which he is liable to pay rent or land revenue of not less than one rupee per annum or village cess of not less than one anna ; or
- (b) is in occupation of a house for which he is liable to pay rent of not less than six rupees per annum, not being a house in a municipality or sanitation area ; or
- (c) is assessed to an annual tax of at least twelve annas under the Central Provinces Sanitation Act, 1902, or the Central Provinces Village Sanitation and Public Management Act, 1920 ; or
- (d) is a village servant holding office as a jhankar, ganda, kotwar, jagalia or mahar, and holds land recorded in the record of rights as service land :

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if for the references in sub-paragraph (a) thereof to one rupee and one anna there were substituted respectively references to two rupees and two annas.

10. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for a constituency situated wholly or partly in the district of Sambalpur if she is the wife of a person who, in that district, either—

- (a) holds land not situated in a municipality or a sanitation area, for which he is liable to pay rent or land revenue of not less than sixteen rupees per annum or village cess of not less than eight annas ; or
- (b) is in occupation of a house for which he is liable to pay an annual rent of not less than thirty rupees, not being a house in a municipality or sanitation area ; or
- (c) is assessed to an annual tax of not less than ten rupees under the Central Provinces Sanitation Act, 1902, or the Central Provinces Village Sanitation and Public Management Act, 1920.

*Interpretation, etc.*

11. (1) In this Schedule, in relation to Orissa—

“backward tribe” has the same meaning as in the Fifth Schedule to this Act ;

“municipality” means an area constituted a municipality under the Bihar and Orissa Municipal Act, 1922, or the Madras District Municipalities Act, 1920, or an area in respect of which a notification has issued under section three hundred and eighty-eight of the Bihar and Orissa Municipal Act, 1922 ;

“municipal tax” means a tax or rate levied in a municipality ;

“sanitation area” means an area administered under the Central Provinces Village Sanitation Act, 1902, or the Central Provinces Village Sanitation and Public Management Act, 1920 ;

“chaukidari tax” means a tax levied under the Village Chaukidari Act, 1870, under section thirty of the Bihar and Orissa Village Administration Act, 1922, or under section forty-seven of the Angul Laws Regulation, 1913.

(2) Where property is held or payments are made jointly by, or assessments made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists, and if it does exist the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorised in that behalf by the family themselves.

(3) Where property is held or payments are made jointly by, or assessments are made jointly on, persons other than the members of a joint family, all such persons shall be regarded as a single person for deciding whether the requisite qualification exists, and if it does exist, then, subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule one and one only of those persons shall be qualified, and the persons to be qualified shall be selected in the prescribed manner.

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## PART XII.

### SIND.

#### *General requirement as to residence.*

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he satisfies the requirement as to residence in relation to that constituency.

For the purposes of this Part of this Schedule a person shall be deemed to satisfy the requirement as to residence—

- (a) in relation to an urban constituency, if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the constituency or within two miles of the boundary thereof ;
- (b) in the case of a rural constituency, if he has for a period of not less than one hundred and eighty days in the previous financial year

resided in a house in the constituency or in a contiguous constituency of the same communal description :

Provided that a person shall be deemed to satisfy the requirement as to residence in relation to any European territorial constituency if he has, for a period of not less than one hundred and eighty days in the previous financial year, resided in a house in the Province.

A person is deemed to reside in a house if he sometimes uses it as a sleeping place, and a person is not deemed to cease to reside in a house merely because he is absent from it, or has another dwelling in which he resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning.

*Qualifications dependent on taxation.*

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency, if he was assessed during the previous financial year to income tax.

*Qualifications dependent on property.*

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) holds in his own right or occupies as a permanent tenant or as a lessee from the Government alienated or unalienated land in the constituency on which, in any one of the five revenue years preceding that in which the prescribed date falls, an assessment of not less than eight rupees land revenue has been paid, or would have been paid if the land had not been alienated ; or
- (b) cultivates as a Hari <sup>1</sup>[or occupies as a tenant] alienated or unalienated land in the constituency on which in the revenue year preceding that in which the prescribed date falls an assessment of not less than sixteen rupees land revenue has been leviable, or would have been leviable if the land had not been alienated ; or
- (c) is the alienee of the right of the Government to the payment of rent or land revenue amounting to not less than eight rupees in respect of alienated land in the constituency ; or
- (d) occupies as owner or tenant in the constituency a house or building situate in the city of Karachi or in any municipal borough, municipal district, cantonment or notified area, and having at least the appropriate value.

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<sup>1</sup> These words were inserted by para. 6 of Part XII of the Government of India (Provincial Legislative Assemblies) Order, 1936.

Where land is cultivated by more than one Hari, only one Hari for every sixteen rupees of land revenue shall be treated as qualified under sub-paragraph (b) of this paragraph in respect of that land, and any question which of several Haris shall be treated as qualified under this paragraph in respect of any land shall be determined in the prescribed manner.

In sub-paragraph (d) of this paragraph, the expression "the appropriate value" means—

- (i) in relation to a house or building situate within the city of Karachi, an annual rental value of thirty rupees ;
- (ii) in relation to a house or building situate outside the city of Karachi but in an area in which a tax is based on the annual rental value of houses or buildings, an annual rental value of eighteen rupees ;
- (iii) in relation to any other house or building, a capital value of seven hundred and fifty rupees.

*Educational qualification.*

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the matriculation or school leaving examination of the university of Bombay or an examination prescribed as at least equivalent to either of those examinations or, if it is so prescribed, any other prescribed examination, not being lower than a vernacular final examination.

*Qualification by reason of service in His Majesty's forces.*

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

*Additional qualification for women.*

6. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency, if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces, or if she is proved in the prescribed manner to be literate, or if her husband possesses the qualifications requisite for the purposes of this paragraph.

7. A husband shall not be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph unless he satisfies the requirement as to residence in relation to the constituency in question, but, subject as aforesaid, a husband shall be deemed to possess the said qualifications if he—

- (a) was in the previous financial year assessed to income tax ; or
- (b) is a retired, pensioned or discharged officer, non-commissioned officer, or soldier of His Majesty's regular military forces ; or

- (c) holds in his own right or occupies as a permanent tenant or as a lessee from the Government alienated or unalienated land in the constituency on which, in any one of the five revenue years preceding that in which the prescribed date falls, an assessment of land revenue amounting, in the Upper Sind Frontier district, to not less than sixteen rupees, and, elsewhere, to not less than thirty-two rupees, has been paid, or would have been paid if the land had not been alienated; or
- (d) is the alienee of the right of the Government to the payment of rent or land revenue in respect of alienated land in the constituency, amounting, in the Upper Sind Frontier district, to not less than sixteen rupees, and, elsewhere, to not less than thirty-two rupees; or
- (e) occupies as owner or tenant in the constituency a house or building situate in the city of Karachi or in a municipal borough, municipal district, cantonment or notified area, and having at least the appropriate value.

In sub-paragraph (e) of this paragraph, the expression "appropriate value" means—

- (i) in relation to a house or building within the city of Karachi, an annual rental value of sixty rupees;
- (ii) in relation to a house or building situate in any other area in which any tax is based on the annual rental value of houses or buildings, an annual rental value of thirty-six rupees; and
- (iii) in relation to any other house or building, a capital value of one thousand five hundred rupees.

*Application necessary for enrolment in certain cases.*

8. No person shall by virtue of paragraph four or paragraph six of this Part of this Schedule be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by him, or, if it is so prescribed, on his behalf that he should be so included.

*Provisions as to joint property, etc.*

9. (1) Subject to the provisions of this paragraph, any reference in this Part of this Schedule to land or other immovable property, or to rent or land revenue in respect of alienated land, shall, in relation to any persons who are co-sharers in such land, property, rent or land revenue, be construed as a reference to the respective shares of those persons.

(2) Where two or more persons occupy any house, the rental value of the house shall, in relation to each of those persons, be deemed to be the rental value thereof divided by the number of those persons.

(3) Where property is owned, held or occupied, or payments are made, jointly by, or assessments are made jointly on, the members of a joint family,



and the property, payments or assessments would qualify a person if they had been owned, held, occupied or made by or on him solely, then, subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, one member of the family shall be qualified in respect of the property, payment or assessment, and that person shall be, in the case of a Hindu joint family, the manager thereof and in other cases the member authorised in that behalf by the family themselves.

Save as aforesaid any property owned, held or occupied or payments made jointly by, or assessments made jointly on, the members of a joint family, shall be left out of account for the purposes of this Part of this Schedule.

(4) Nothing in this paragraph affects the provisions of Part I of this Schedule relating to partners in firms assessed to income tax or the provisions of this Part of this Schedule relating to Haris.

*Interpretation, etc.*

10. (1) In this Schedule, in relation to Sind—

“tenant” means a lessee whether holding under an Instrument or under an oral agreement, and includes a mortgagee of a tenant’s rights with possession, and, in relation to a house not situate in military or police lines, also includes any person occupying the house rent free by virtue of any office, service or employment ;

“holder” means a person lawfully in possession of land, whether his possession is actual or not, and “hold” shall be construed accordingly.

(2) The value of any machinery, furniture or equipment contained in or situate upon any house or building shall not be included in estimating for the purposes of this Part of this Schedule the rental value or the capital value of the house or building.

(3) In computing for the purposes of this Part of this Schedule the assessable value of any land, regard shall be had to the average rate of assessment on assessed land in the same village or, if there is no such land in the same village, the average rate of assessment on assessed land in the nearest village containing assessed land.

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## SEVENTH SCHEDULE.<sup>1</sup>

### LEGISLATIVE LISTS.

#### LIST I.

#### *Federal Legislative List.*

1. His Majesty’s naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being

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<sup>1</sup> This Schedule came into force on the 1st April, 1937, *see* the Government of India (Commencement and Transitory Provisions) Order, 1936, para. 3.

forces raised for employment in Indian States or military or armed police maintained by Provincial Governments ; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment ; central intelligence bureau ; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

2. Naval, military and air force works ; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas.

3. External affairs ; the implementing of treaties and agreements with other countries ; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

6. Public debt of the Federation.

7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication ; Post Office Savings Bank.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a Federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India ; Federal meteorological organisations.

15. Ancient and historical monuments ; archæological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State,

or British subjects domiciled in the United Kingdom ; pilgrimages to places beyond India.

18. Port quarantine ; seamen's and marine hospitals, and hospitals connected with port quarantine.

19. Import and export across customs frontiers as defined by the Federal Government.

20. Federal railways ; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers ; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

21. Maritime shipping and navigation, including shipping and navigation on tidal waters ; Admiralty jurisdiction.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

24. Aircraft and air navigation ; the provision of aerodromes ; regulation and organisation of air traffic and of aerodromes.

25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

26. Carriage of passengers and goods by sea or by air.

27. Copyright, inventions, designs, trademarks and merchandise marks.

28. Cheques, bills of exchange, promissory notes and other like instruments.

29. Arms ; firearms ; ammunition.

30. Explosives.

31. Opium, so far as regards cultivation and manufacture, or sale for export.

32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

33. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oilfields.

36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State ; Government insurance, except so far as undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be ; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly ; the salaries, allowances and privileges of the members of the Federal Legislature ; and, to such extent as is expressly authorised by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

42. Offences against laws with respect to any of the matters in this list.

43. Inquiries and statistics for the purposes of any of the matters in this list.

44. Duties of customs, including export duties.

45. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption ;

(b) opium, Indian hemp and other narcotic drugs and narcotics ; non-narcotic drugs ;

(c) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this entry.

46. Corporation tax.

47. Salt.

48. State lotteries.

49. Naturalisation.

50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.

51. Establishment of standards of weight.

52. Ranchi European Mental Hospital.

53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

54. Taxes on income other than agricultural income.

55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies ; taxes on the capital of companies.

56. Duties in respect of succession to property other than agricultural land.

57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

58. Terminal taxes on goods or passengers carried by railway or air ; taxes on railway fares and freights.

59. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

## LIST II.

### *Provincial Legislative List.*

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power) ; the administration of justice ; constitution and organisation of all courts, except the Federal Court, and fees taken therein ; preventive detention for reasons connected with the maintenance of public order ; persons subjected to such detention.

2. Jurisdiction and powers of all courts except the Federal Court with respect to any of the matters in this list ; procedure in Rent and Revenue Courts.

3. Police, including railway and village police.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein ; arrangements with other units for the use of prisons and other institutions.

5. Public debt of the Province.

6. Provincial Public Services and Provincial Public Service Commissions.

7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.

8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province.

9. Compulsory acquisition of land.

10. Libraries, museums and other similar institutions controlled or financed by the Province.

11. Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof; the salaries, allowances and privileges of the members of the Provincial Legislature; and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature.

13. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-Government or village administration.

14. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.

15. Pilgrimages, other than pilgrimages to places beyond India.

16. Burials and burial grounds.

17. Education.

18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove.

22. Forests.

23. Regulations of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

24. Fisheries.

25. Protection of wild birds and wild animals.
26. Gas and gasworks.
27. Trade and commerce within the Province ; markets and fairs ; money lending and money lenders.
28. Inns and innkeepers.
29. Production, supply and distribution of goods ; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.
30. Adulteration of foodstuffs and other goods ; weights and measures.
31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.
32. Relief of the poor ; unemployment.
33. The incorporation, regulation, and winding-up of corporations other than corporations specified in List I ; unincorporated trading, literary, scientific, religious and other societies and associations ; co-operative societies.
34. Charities and charitable institutions ; charitable and religious endowments.
35. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.
36. Betting and gambling.
37. Offences against laws with respect of any of the matters in this list.
38. Inquiries and statistics for the purpose of any of the matters in this list.
39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.
40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—
  - (a) alcoholic liquors for human consumption ;
  - (b) opium, Indian hemp and other narcotic drugs and narcotics ; non-narcotic drugs ;
  - (c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.
41. Taxes on agricultural income.
42. Taxes on lands and buildings, hearths and windows.
43. Duties in respect of succession to agricultural land.

44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.
45. Capitation taxes.
46. Taxes on professions, trades, callings and employments.
47. Taxes on animals and boats.
48. Taxes on the sale of goods and on advertisements.
49. Cesses on the entry of goods into a local area for consumption, use or sale therein.
50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.
51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
52. Dues on passengers and goods carried on inland waterways.
53. Tolls.
54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

### LIST III.

#### *Concurrent Legislative List.*

#### PART I.

1. Criminal law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.
2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.
3. Removal of prisoners and accused persons from one unit to another unit.
4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act ; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.
5. Evidence and oaths ; recognition of laws, public acts and records and judicial proceedings.
6. Marriage and divorce ; infants and minors ; adoption.
7. Wills, intestacy, and succession, save as regards agricultural land.
8. Transfer of property other than agricultural land ; registration of deeds and documents.
9. Trusts and Trustees.



10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land.
11. Arbitration.
12. Bankruptcy and insolvency; administrators-general and official trustees.
13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.
14. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or List II.
15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list.
16. Legal, medical and other professions.
17. Newspapers, books and printing presses.
18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.
19. Poisons and dangerous drugs.
20. Mechanically propelled vehicles.
21. Boilers.
22. Prevention of cruelty to animals.
23. European vagrancy; criminal tribes.
24. Inquiries and statistics for the purpose of any of the matters in this Part of this List.
25. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

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**(2).**

## PART II.

26. Factories.
27. Welfare of labour; conditions of labour; provident funds; employers liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.
28. Unemployment insurance.
29. Trade unions; industrial and labour disputes.
30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.
31. Electricity.
32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on inland waterways.
33. The sanctioning of cinematograph films for exhibition.

34. Persons subjected to preventive detention under Federal authority.

35. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

36. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

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## EIGHTH SCHEDULE.

Section 182.

### THE FEDERAL RAILWAY AUTHORITY.

1. The Federal Railway Authority, which shall be a body corporate by, and may sue and be sued in, that name, (in this Schedule referred to as "the Authority") shall consist of seven persons to be appointed by the Governor-General.

2. A person shall not be qualified to be appointed or to be a member of the Authority—

(a) unless he has had experience in commerce, industry, agriculture, finance, or administration ; or

(b) if he is, or within the twelve months last preceding has been

(i) a member of the Federal or any Provincial Legislature ;  
or

(ii) in the service of the Crown in India ; or

(iii) a railway official in India.

3. Of the first members of the Authority, three shall be appointed for three years and any of those members shall at the expiration of his original term of office be eligible for re-appointment for a further term of three years, or of five years.

Subject as aforesaid, a member of the Authority shall be appointed for five years and shall at the expiration of his original term of office be eligible for re-appointment for a further term not exceeding five years.

The Governor-General, exercising his individual judgment, may terminate the appointment of any member if satisfied that that member is for any reason unable or unfit to continue to perform the duties of his office.

4. The Governor-General, exercising his individual judgment, may make rules providing for the appointment of temporary members to act in place of any members temporarily unable to perform the duties of their office.

5. A member of the Authority shall be entitled to receive such salary and allowances as the Governor-General, exercising his individual judgment, may determine :

Provided that the emoluments of a member shall not be reduced during his term of office.

6. All acts of the Authority and all questions before them shall be done and decided by a majority of the members present and voting at a meeting of the Authority.

In the case of an equality of votes at any meeting, the person presiding thereat shall have a second or casting vote.

7. If a member of the Authority is or becomes the holder of or tenders for any contract for the supply of materials to, or the execution of works for, any railway in India, or is or becomes concerned in the management of any company holding or tendering for such a contract as aforesaid, he shall forthwith make full disclosure of the facts to the Authority and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract.

8. At any meeting of the Authority a person or persons deputed by the Governor-General to represent him may attend and speak, but not vote.

9. Subject to the provisions of this Act, the Authority may make standing orders for the regulation of their proceedings and business, and may vary or revoke any such order.

10. The proceedings of the Authority shall not be invalidated by any vacancy among their number, or by any defect in the appointment or qualification of any member.

11. At the head of the executive staff of the Authority there shall be a chief railway commissioner, being a person with experience in Railway administration, who shall be appointed by the Governor-General, exercising his individual judgment after consultation with the Authority.

12. The chief railway commissioner shall be assisted in the performance of his duties by a financial commissioner, who shall be appointed by the Governor-General, and by such additional commissioners, being persons with experience in railway administration, as the Authority on the recommendation of the chief railway commissioner may appoint.

13. The chief railway commissioner shall not be removed from office except by the Authority and with the approval of the Governor-General, exercising his individual judgment, and the financial commissioner shall not be removed from office except by the Governor-General, exercising his individual judgment.

14. The chief railway commissioner and the financial commissioner shall have the right to attend any meeting of the Authority, and the financial commissioner shall have the right to require any matter which relates to, or affects, finance to be referred to the Authority.

15. The Authority shall not be liable to pay Indian income tax or super-tax on any of its income, profits or gains.

16. The Authority shall entrust all their money which is not immediately needed to the Reserve Bank of India and employ that bank as their agents for all transactions in India relating to remittances, exchange and banking, and the bank shall undertake the custody of such moneys and such agency

transactions on the same terms and conditions as those upon which they undertake the custody of moneys belonging to, or agency transactions for, the Federal Government.

## NINTH SCHEDULE.<sup>1</sup>

Section 317.

### PROVISIONS OF GOVERNMENT OF INDIA ACT CONTINUED IN FORCE WITH AMENDMENTS UNTIL THE ESTABLISHMENT OF THE FEDERATION.

#### *The Governor-General's Executive Council.*

36. (1) The members of the Governor-General's Executive Council shall be appointed by His Majesty by warrant under the Royal Sign Manual. Members of Council.

(2) The number of the members of the Council shall be such as His Majesty thinks fit to appoint.

(3) Three at least of them must be persons who have been for at least ten years in the service of the Crown in India, and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, or a pleader of a high court, of not less than ten years' standing.

(4) If any member of the Council (other than the Commander-in-Chief for the time being of His Majesty's forces in India) is at the time of his appointment in the military service of the Crown, he shall not, during his continuance in office as such member, hold any military command or be employed in actual military duties.

(5) Provision may be made by rules under this Act as to the qualifications to be required in respect of the members of the Governor-General's Executive Council, in any case where such provision is not made by the foregoing provisions of this section.

37. If the Commander-in-Chief for the time being of His Majesty's forces in India is a member of the Governor-General's Executive Council, he shall, subject to the provisions of this Act, have rank and precedence in the Council next after the Governor-General. Rank and precedence of Commander-in-Chief.

38. The Governor-General shall appoint a member of his Executive Council to be vice-president thereof. Vice-President of Council.

39. (1) The Governor-General's Executive Council shall assemble at such places in India as the Governor-General in Council appoints. Meetings.

(2) At any meeting of the Council the Governor-General or other person presiding and one member of the Council (other than the Commander-in-Chief) may exercise all the functions of the Governor-General in Council.

40. (1) All orders and other proceedings of the Governor-General in Council shall be expressed to be made by the Governor-General in Council, and shall be signed by a Secretary to the Government of India, or otherwise as Business of Governor-General in Council.

<sup>1</sup> This Schedule came into force on the 1st April, 1937, see para. 3 of the Government of India (Commencement and Transitory Provisions) Order, 1936.

the Governor-General in Council may direct, and, when so signed, shall not be called into question in any legal proceeding on the ground that they were not duly made by the Governor-General in Council.

(2) The Governor-General may make rules and orders for the more convenient transaction of business in his Executive Council, and every order made or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the Governor-General in Council.

Procedure  
in case of  
difference  
of opinion.

41. (1) If any difference of opinion arises on any question brought before a meeting of the Governor-General's Executive Council, the Governor-General in Council shall be bound by the opinion and decision of the majority of those present, and, if they are equally divided, the Governor-General or other person presiding shall have a second or casting vote.

(2) Provided that, whenever any measure is proposed before the Governor-General in Council whereby the safety, tranquillity or interests of British India, or of any part thereof, are or may be, in the judgment of the Governor-General, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the Council dissent from that opinion, the Governor-General may, on his own authority and responsibility, adopt, suspend or reject the measure, in whole or in part.

(3) In every such case any two members of the dissentient majority may require that the adoption, suspension or rejection of the measure, and the fact of their dissent, be reported to the Secretary of State, and the report shall be accompanied by copies of any minutes which the members of the Council have recorded on the subject.

(4) Nothing in this section shall empower the Governor-General to do anything which he could not lawfully have done with the concurrence of his Council.

Provisions  
for absence  
of Governor-  
General from  
meetings of  
Council.

42. If the Governor-General is obliged to absent himself from any meeting of the Council, by indisposition or any other cause, the vice-president, or, if he is absent, the senior member (other than the Commander-in-Chief) present at the meeting, shall preside thereat, with the like powers as the Governor-General would have had if present :

Provided that, if the Governor-General is at the time resident at the place where the meeting is assembled, and is not prevented by indisposition from signing any act of Council made at the meeting, the act shall require his signature ; but, if he declines or refuses to sign it, the like provisions shall have effect as in cases where the Governor-General, when present, dissents from the majority at a meeting of the Council.

Powers of  
Governor-  
General in  
absence  
from Council.

43. (1) Whenever the Governor-General in Council declares that it is expedient that the Governor-General should visit any part of India unaccompanied by his Executive Council, the Governor-General in Council may, by order, authorize the Governor-General alone to exercise, in his discretion, all or any of the powers which might be exercised by the Governor-General in Council at meetings of the Council.

*The Indian Legislature.*

63. Subject to the provisions of this Act, the Indian Legislature shall consist of the Governor-General and two chambers, namely, the Council of State and the Legislative Assembly.

Except as otherwise provided by or under this Act, a Bill shall not be deemed to have been passed by the Indian legislature unless it has been agreed to by both chambers, either without amendment or with such amendments only as may be agreed to by both chambers.

63A. (1) The Council of State shall consist of not more than sixty members nominated or elected in accordance with rules made under this Act, of whom not more than twenty shall be official members.

(2) The Governor-General shall have power to appoint, from among the members of the Council of State, a president and other persons to preside in such circumstances as he may direct.

(3) The Governor-General shall have the right of addressing the Council of State, and may for that purpose require the attendance of its members.

63B. (1) The Legislative Assembly shall consist of members nominated or elected in accordance with rules made under this Act.

(2) The total number of members of the Legislative Assembly shall be one hundred and forty. The number of non-elected members shall be forty, of whom twenty-six shall be official members. The number of elected members shall be one hundred :

Provided that rules made under this Act may provide for increasing the number of members of the Legislative Assembly as fixed by this section, and may vary the proportion which the classes of members bear one to another, so, however, that at least five-sevenths of the members of the Legislative Assembly shall be elected members, and at least one-third of the other members shall be non-official members.

(3) The Governor-General shall have the right of addressing the Legislative Assembly, and may for that purpose require the attendance of its members.

63C. (1) There shall be a president of the Legislative Assembly, who shall be a member of the Assembly elected by the Assembly and approved by the Governor-General.

(2) There shall be a deputy president of the Legislative Assembly, who shall preside at meetings of the Assembly in the absence of the president, and who shall be a member of the Assembly elected by the Assembly and approved by the Governor-General.

(3) A president and a deputy president shall cease to hold office if they cease to be members of the Assembly. They may resign office by writing under their hands addressed to the Governor-General, and may be removed from office by a vote of the Assembly with the concurrence of the Governor-General.

(4) A president and deputy-president shall receive such salaries as may be determined by Act of the Indian Legislature.

Duration  
and sessions  
of Legis-  
lative  
Assembly  
and Council  
of State.

63D. (1) Every Council of State shall continue for five years, and every Legislative Assembly for three years, from its first meeting :

Provided that—

- (a) either chamber of the legislature may be sooner dissolved by the Governor-General ; and
- (b) any such period may be extended by the Governor-General if in special circumstances he so thinks fit ; and
- (c) after the dissolution of either chamber the Governor-General shall appoint a date not more than six months, or, with the sanction of the Secretary of State, not more than nine months, after the date of dissolution for the next session of that chamber.

(2) The Governor-General may appoint such times and places for holding the sessions of either chamber of the Indian legislature as he thinks fit, and may also from time to time, by notification or otherwise, prorogue such sessions.

(3) Any meeting of either chamber of the Indian legislature may be adjourned by the person presiding.

(4) All questions in either chamber shall be determined by a majority of votes of members present other than the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes.

(5) The powers of either chamber of the Indian legislature may be exercised notwithstanding any vacancy in the chamber.

Membership  
of both  
chambers.

63E. (1) An official shall not be qualified for election as a member of either chamber of the Indian legislature, and, if any non-official member of either chamber accepts office in the service of the Crown in India, his seat in that chamber shall become vacant.

(2) If an elected member of either chamber of the Indian legislature becomes a member of the other chamber, his seat in such first-mentioned chamber shall thereupon become vacant.

(3) If any person is elected a member of both chambers of the Indian legislature, he shall, before he takes his seat in either chamber, signify in writing the chamber of which he desires to be a member, and thereupon his seat in the other chamber shall become vacant.

(4) Every member of the Governor-General's Executive Council shall be nominated as a member of one chamber of the Indian legislature, and shall have the right of attending in and addressing the other chamber, but shall not be a member of both chambers.

Supple-  
mentary  
provisions  
as to com-  
position of  
Legislative

64. (1) Subject to the provisions of this Act, provision may be made by rules under this Act as to—

- (a) the term of office of nominated members of the Council of State and the Legislative Assembly, and the manner of filling casual

vacancies occurring by reason of absence of members from India, <sup>Assembly and Council of State.</sup> inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise; and

- (b) the conditions under which and the manner in which persons may be nominated as members of the Council of State or the Legislative Assembly; and
- (c) the qualification of electors, the constitution of constituencies, and the method of election for the Council of State and the Legislative Assembly (including the number of members to be elected by communal and other electorates) and any matter incidental or ancillary thereto; and
- (d) the qualifications for being or for being nominated or elected as members of the Council of State or the Legislative Assembly; and
- (e) the final decision of doubts or disputes as to the validity of an election; and
- (f) the manner in which the rules are to be carried into effect.

(2) Subject to any such rules, any person who is a ruler or subject of any state in India may be nominated as a member of the Council of State or the Legislative Assembly.

67. (1) Provision may be made by rules under this Act for regulating <sup>Business and proceedings in Indian legislature.</sup> the course of business and the preservation of order in the chambers of the Indian legislature, and as to the persons to preside at the meetings of the Legislative Assembly in the absence of the president and the deputy-president; and the rules may provide for the number of members required to constitute a quorum, and for prohibiting or regulating the asking of questions on, and the discussion of, any subject specified in the rules.

(2a) Where in either chamber of the Indian legislature any Bill has been introduced, or is proposed to be introduced, or any amendment to a Bill is moved, or proposed to be moved, the Governor-General may certify that the Bill, or any clause of it, or the amendment, affects the safety or tranquillity of British India or any part thereof, and may direct that no proceedings, or that no further proceedings, shall be taken by the chamber in relation to the Bill, clause, or amendment, and effect shall be given to such direction.

(3) If any Bill which has been passed by one chamber is not, within six months after the passage of the Bill by that chamber, passed by the other chamber either without amendments or with such amendments as may be agreed to by the two chambers, the Governor-General may in his discretion refer the matter for decision to a joint sitting of both chambers: Provided that standing orders made under this section may provide for meetings of members of both chambers appointed for the purpose, in order to discuss any difference of opinion which has arisen between the two chambers.

(4) Without prejudice to the powers of the Governor-General under section sixty-eight of this Act, the Governor-General may where a Bill has been passed



by both chambers of the Indian legislature, return the Bill for reconsideration by either chamber.

(5) Rules made for the purpose of this section may contain such general and supplemental provisions as appear necessary for the purpose of giving full effect to this section.

(6) Standing orders may be made providing for the conduct of business and the procedure to be followed in either chamber of the Indian legislature in so far as these matters are not provided for by rules made under this Act. The first standing orders shall be made by the Governor-General in Council, but may, with the consent of the Governor-General, be altered by the chamber to which they relate.

Any standing order made as aforesaid which is repugnant to the provisions of any rules made under this Act shall, to the extent of that repugnancy but not otherwise, be void.

(7) Subject to the rules and standing orders affecting the chamber, there shall be freedom of speech in both chambers of the Indian legislature. No person shall be liable to any proceedings in any court by reason of his speech or vote in either chamber, or by reason of anything contained in any official report of the proceedings of either chamber.

Indian  
Budget.

67A. (1) The estimated annual expenditure and revenue of the Governor-General in Council shall be laid in the form of a statement before both Chambers of the Indian legislature in each year.

(2) No proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General.

(3) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly, nor shall they be open to discussion by either chamber at the time when the annual statement is under consideration unless the Governor-General otherwise directs :—

- (i) interest and sinking fund charges on loans ; and
- (ii) expenditure of which the amount is prescribed by or under any law ; and
- (iii) salaries (including in the case of the Governor-General sums payable on his account in respect of his office) and pensions payable to or to the dependants of—
  - (a) persons appointed by or with the approval of His Majesty ;
  - (b) Chief Commissioners and Judicial Commissioners ; and
- (iv) any grants for purposes connected with the administration of any areas in a Province which are for the time being Excluded Areas ; and
- (v) the sums payable to His Majesty under the Government of India Act, 1935, in respect of the expenses of His Majesty incurred

in discharging the functions of the Crown in relation to Indian States ; and

(vi) expenditure classified by the order of the Governor-General in Council as—

- (a) ecclesiastical ;
- (b) external affairs ;
- (c) defence ; or
- (d) relating to tribal areas.

(vii) Expenditure of the Governor-General in discharging his functions as respects matters with respect to which he is required by the provisions of the Government of India Act, 1935, for the time being in force to act in his discretion ;

(viii) any other expenditure declared by the provisions of the Government of India Act, 1935, for the time being in force to be charged on the revenues of the Federation.

(4) If any question arises as to whether any proposed appropriation of revenue or moneys does or does not relate to the above heads, the decision of the Governor-General on the question shall be final.

(5) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to heads of expenditure not specified in the above heads shall be submitted to the vote of the Legislative Assembly in the form of demands for grants.

(6) The Legislative Assembly may assent or refuse its assent to any demand or may reduce the amount referred to in any demand by a reduction of the whole grant.

(7) The demands as voted by the Legislative Assembly shall be submitted to the Governor-General in Council, who shall, if he declares that he is satisfied that any demand which has been refused by the Legislative Assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding the withholding of such assent, or the reduction of the amount therein referred to, by the Legislative Assembly.

(8) Notwithstanding anything in this section, the Governor-General shall have power, in cases of emergency, to authorise such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof.

67B. (1) Where either chamber of the Indian legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor-General, any Bill, the Governor-General may certify that the passage of the Bill is, essential for the safety, tranquillity or interests of British India or any part thereof, and thereupon—

Provision  
for case of  
failure to  
pass legisla-  
tion.

- (a) if the Bill has already been passed by the other chamber the Bill shall, on signature by the Governor-General, notwithstanding that it has not been consented to by both chambers, forthwith

become an Act of the Indian legislature in the form of the Bill as originally introduced or proposed to be introduced in the Indian legislature, or (as the case may be) in the form recommended by the Governor-General; and

- (b) if the Bill has not already been so passed, the Bill shall be laid before the other chamber, and, if consented to by that chamber in the form recommended by the Governor-General, shall become an Act as aforesaid on the signification of the Governor-General's assent, or, if not so consented to, shall, on signature by the Governor-General, become an Act as aforesaid.

(2) Every such Act shall be expressed to be made by the Governor-General, and shall, as soon as practicable after being made, be laid before both Houses of Parliament, and shall not have effect until it has received His Majesty's assent, and shall not be presented for His Majesty's assent until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat; and upon the signification of such assent by His Majesty in Council, and the notification thereof by the Governor-General, the Act shall have the same force and effect as an Act passed by the Indian legislature and duly assented to:

Provided that, where in the opinion of the Governor-General a state of emergency exists which justifies such action, the Governor-General may direct that any such Act shall come into operation forthwith, and thereupon the Act shall have such force and effect as aforesaid, subject, however, to disallowance by His Majesty in Council.

Assent of  
Governor-  
General to  
Bills.

68. (1) When a Bill has been passed by both chambers of the Indian legislature, the Governor-General may declare that he assents to the Bill, or that he withholds assent from the Bill, or that he reserves the Bill for the signification of His Majesty's pleasure thereon.

(2) A Bill passed by both chambers of the Indian legislature shall not become an Act until the Governor-General has declared his assent thereto, or, in the case of a Bill reserved for the signification of His Majesty's pleasure, until His Majesty in Council has signified his assent and that assent has been notified by the Governor-General.

Power of  
Crown to  
disallow  
Acts.

69. (1) When an Act of the Indian legislature has been assented to by the Governor-General, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty in Council to signify his disallowance of any such Act.

(2) Where the disallowance of any such Act has been so signified, the Governor-General shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

Power to  
make ordi-  
nances in  
cases of  
emergency.

72. The Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good Government of British India or any part thereof, and any ordinance so made shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed

by the Indian legislature ; but the power of making ordinances under this section is subject to the like restrictions as the power of the Indian legislature to make laws ; and any ordinance made under this section is subject to the like disallowance as an Act passed by the Indian legislature, and may be controlled or superseded by any such Act.

*Salaries, leave of absence, vacation of office, etc.*

85. (1) There shall be paid to the Governor-General of India, to the Commander-in-Chief of His Majesty's Forces in India and to the members of the Governor-General's Executive Council (other than the Commander-in-Chief), out of the revenues of the Governor-General in Council, such salaries and such allowances (if any) for equipment and voyage as the Secretary of State may by order fix in that behalf and subject to or in default of any such order as are payable at the commencement of Part III of the Government of India Act, 1935 ; but the salary of the Governor-General shall not exceed two hundred and fifty-six thousand rupees annually, the salary of the Commander-in-Chief shall not exceed one hundred thousand rupees annually and the salary of members of the Governor-General's Executive Council (other than the Commander-in-Chief) shall not exceed eighty thousand rupees annually.

Salaries and allowances of Governor-General and certain other officials in India.

(2) Provided as follows—

- (a) the Secretary of State shall not make any Order affecting salaries of members of the Governor-General's Executive Council except after consulting his advisers and with the concurrence of at least one-half of them ;
- (b) if any person to whom this section applies holds or enjoys any pension or salary or any office of profit under the Crown or under any public office, his salary under this section shall be reduced by the amount of the pension, salary or profits of office so held or enjoyed by him ;
- (c) nothing in the provisions of this section with respect to allowances shall authorise the imposition of any additional charge on the revenues of the Governor-General in Council.

(3) The remuneration payable to a person under this section shall commence on his taking upon himself the execution of his office and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein :

Provided that nothing in this section shall apply to the allowances or other forms of profit and advantage which may have been sanctioned for such persons before the commencement of Part III of the Government of India Act, 1935, by the Secretary of State in Council or may thereafter be sanctioned by the Secretary of State.

86. (1) The Secretary of State may grant to the Governor-General and on the recommendation of the Governor-General in Council, to the Commander-in-Chief, leave of absence for urgent reasons of public interest, or of health or of private affairs.

Power to grant leave of absence to Governor-General, etc.

(2) The Governor-General in Council may grant to any member of his Executive Council (other than the Commander-in-Chief) leave of absence for urgent reasons of health or of private affairs.

(3) Leave of absence shall not be granted to any person in pursuance of this section for any period exceeding four months nor more than once during his tenure of office :

Provided that the Secretary of State may, if he thinks fit, extend any period of leave so granted, but in any such case the reason for the extension shall be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament.

(4) Where leave of absence is granted to any person in pursuance of this section, he shall retain his office during the period of leave as originally granted, or, if that period is extended by the Secretary of State during the period as so extended, but, if his absence exceeds that period, his office shall be deemed to have become vacant in the case of a person granted leave for urgent reasons of public interest as from the termination of that period and in any other case as from the commencement of his absence.

(5) Where a person obtains leave of absence in pursuance of this section, he shall be entitled to receive during his absence such leave-allowances as may be prescribed by rules made by the Secretary of State, but, if he does not resume his duties upon the termination of the period of the leave, he shall, unless the Secretary of State otherwise directs, repay, in such manner as may be so prescribed as aforesaid, any leave-allowances received under this subsection.

(6) If the Governor-General or the Commander-in-Chief is granted leave for urgent reasons of public interest, the Secretary of State may, in addition to the leave-allowances to which he is entitled under this section, grant to him such further allowances in respect of travelling expenses as the Secretary of State may think fit.

(7) Rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made.

Acting appointments during the absence of the Governor-General, etc. on leave.

87. (1) Where leave is granted in pursuance of the foregoing section to the Governor-General or to the Commander-in-Chief, a person shall be appointed to act in his place during his absence, and the appointment shall be made by His Majesty by warrant under the Royal Sign Manual. The person so appointed during the absence of the Commander-in-Chief may, if the Commander-in-Chief was a member of the Executive Council of the Governor-General, be also appointed by the Governor-General in Council to be a temporary member of that Council.

(2) The person so appointed shall, until the return to duty of the permanent holder of the office, or, if he does not return, until a successor arrives, hold and execute the office to which he has been appointed and shall have and may exercise all the rights and powers thereof and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing the emolu-

ments and advantages (if any) to which he was entitled at the time of his being appointed to that office.

89. (1) If any person appointed to the office of Governor-General is in India on or after the event on which he is to succeed, and thinks it necessary to exercise the powers of Governor-General before he takes his seat in Council, he may make known by notification his appointment and his intention to assume the office of Governor-General.

Power for Governor-General to exercise powers before taking seat.

(2) After the notification, and thenceforth until he repairs to the place where the Council may assemble, he may exercise alone all or any of the powers which might be exercised by the Governor-General in Council.

(3) All acts done in the Council after the date of the notification, but before the communication thereof to the Council, shall be valid, subject, nevertheless, to revocation or alteration by the person who has so assumed the office of Governor-General.

(4) When the office of Governor-General is assumed under the foregoing provision, the vice-president, or, if he is absent, the senior member of the council (other than the Commander-in-Chief) then present, shall preside therein, with the same powers as the Governor-General would have had if, present.

90. (1) If a vacancy occurs in the office of Governor-General when there is no successor in India to supply the vacancy, that one of the following governors, that is to say, the Governor of Madras, the Governor of Bombay, and the Governor of Bengal, who was first appointed to the office of governor by His Majesty shall hold and execute the office of Governor-General until a successor arrives or until some person in India is duly appointed thereto.

Temporary vacancy in office of Governor-General.

(2) Every such acting Governor-General, while acting as such, shall have and may exercise all the rights and powers of the office of Governor-General, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing the salary and allowances appertaining to his office of Governor, and shall not act in his office of Governor.

(3) If, on the vacancy occurring, it appears to the governor, who by virtue of this section holds and executes the office of Governor-General, necessary to exercise the powers thereof before he takes his seat in Council, he may make known by notification his appointment, and his intention to assume the office of Governor-General, and thereupon the provisions of section eighty-nine of this Act shall apply.

(4) Until such a governor has assumed the office of Governor-General, if no successor is on the spot to supply such vacancy, the vice-president, or, if he is absent, the senior member of the Executive Council (other than the Commander-in-Chief) shall hold and execute the office of Governor-General until the vacancy is filled in accordance with the provisions of this Act.

(5) Every vice-president or other member of Council so acting as Governor-General, while so acting, shall have and may exercise all the rights and powers of the office of Governor-General, and shall be entitled to receive the

emoluments and advantages appertaining to the office, foregoing his salary and allowances as member of Council for that period.

Temporary  
vacancy in  
office of  
member of  
the Execu-  
tive Council.

92. (1) If a vacancy occurs in the office of a member of the Executive Council of the Governor-General (other than the Commander-in-Chief), and there is no successor present on the spot, the Governor-General in Council shall supply the vacancy by appointing a temporary member of council.

(2) Until a successor arrives, the person so appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing all emoluments and advantages to which he was entitled at the time of his being appointed to that office.

(3) If a member of the Executive Council of the Governor-General (other than the Commander-in-Chief) is, by infirmity or otherwise, rendered incapable of acting or of attending to act as such, or is absent on leave or special duty, the Governor-General in Council shall appoint some person to be a temporary member of council.

(4) Until the return to duty of the member so incapable or absent, the person temporarily appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing the emoluments and advantages (if any) to which he was entitled at the time of his being appointed to that office.

(4a) When a member of the Executive Council is by infirmity or otherwise rendered incapable of acting or attending to act as such and a temporary member of council is appointed in his place, the absent member shall be entitled to receive half his salary for the period of his absence.

(5) Provided as follows :—

(a) no person may be appointed a temporary member of council who might not have been appointed to fill the vacancy supplied by the temporary appointment ; and

(b) if the Secretary of State informs the Governor-General that it is not the intention of His Majesty to fill a vacancy in the Governor-General's Executive Council, no temporary appointment may be made under this section to fill the vacancy, and, if any such temporary appointment has been made before the date of the receipt of the information by the Governor-General, the tenure of the person temporarily appointed shall cease from that date.

Vacancies in  
legislative  
councils.

93. (1) A nominated or elected member of either chamber of the Indian legislature may resign his office to the Governor-General, and on the acceptance of the resignation the office shall become vacant.

(2) If for a period of two consecutive months any such member is absent from India or unable to attend to the duties of his office the Governor-General may, by notification published in the Government gazette, declare that the seat in council of that member has become vacant.

*Supplemental.*

129A. (1) Where any matter is required to be prescribed or regulated by rules under this Act, and no special provision is made as to the authority by whom the rules are to be made, the rules shall be made by the Governor-General in Council, with the sanction of the Secretary of State, and shall not be subject to repeal or alteration by any legislature in India. Provisions as to rules.

(2) Any rules made under this Act may be so framed as to make different provision for different provinces.

(3) Any rules to which sub-section (1) of this section applies shall be laid before both Houses of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next thirty days on which that House has sat after the rules are laid before it praying that the rules or any of them may be annulled, His Majesty in Council may annul the rules or any of them, and those rules shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder :

Provided that the Secretary of State may direct that any rules to which this section applies shall be laid in draft before both Houses of Parliament, and in such case the rules shall not be made unless both Houses by resolution approve the draft either without modification or addition, or with modifications and additions to which both Houses agree, but, upon such approval being given, the rules may be made in the form in which they have been approved, and such rules on being so made shall be of full force and effect, and shall not require to be further laid before Parliament.

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## THE GOVERNMENT OF BURMA ACT, 1935.

## (26 Geo. 5 &amp; 1 Edw. 8, c. 3.)

*An Act to make further provision for the Government of Burma.*

[2nd August, 1935.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows :—

## PART I.

## INTRODUCTORY.

1. This Act may be cited as the Government of Burma Act, 1935<sup>2</sup>.

Short title.

2. (1) All rights, authority and jurisdiction heretofore belonging to His Majesty the King, Emperor of India, which appertain or are incidental to the Government of Burma by the Crown.

<sup>1</sup> The Tenth Schedule is a repealing Schedule and has not been reprinted.

<sup>2</sup> Only such portions of the Act as have application to India have been reprinted.



government of the territories in Burma for the time being vested in him and all rights, authority and jurisdiction exercisable by him by treaty, grant, usage, sufferance or otherwise in, or in relation to, any other territories in Burma, are exercisable by His Majesty, except in so far as may be otherwise provided by or under this Act, or as may be otherwise directed by His Majesty.

(2) The said rights, authority and jurisdiction shall include any rights, authority or jurisdiction heretofore exercisable in relation to any territories in Burma by the Secretary of State, the Secretary of State in Council, the Governor-General of India, the Governor-General of India in Council, the Governor of Burma or the Local Government of Burma, whether by delegation from His Majesty or otherwise.

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## PART V.

### RESTRICTIONS ON DISCRIMINATION, ETC.

British  
subjects  
domiciled in  
the United  
Kingdom  
and British  
India.

**44.** (1) Subject to the provisions of this Part of this Act, a British subject domiciled in the United Kingdom shall be exempt from the operation of so much of any Act of the Legislature as imposes any restriction on the right of entry into Burma :

Provided that no person shall by virtue of this sub-section be entitled to claim exemption from any such restriction, if and so long as British subjects domiciled in Burma are by or under the law of the United Kingdom subject in the United Kingdom to a like restriction.

For the purposes of this sub-section a provision, whether of the law of Burma or of the law of the United Kingdom, empowering any public authority to impose quarantine regulations, or to exclude or deport individuals wherever domiciled who appear to that authority to be undesirable persons, shall be deemed not to be a restriction on the right of entry.

(2) Subject to the provisions of this Part of this Act, a British subject domiciled in the United Kingdom shall be exempt from the operation of so much of any Act of the Legislature as imposes by reference to place of birth, race, descent, language, religion, domicile, residence, or duration of residence, any disability, liability, restriction or condition in regard to travel, residence, the acquisition, holding, or disposition of property, the holding of public office, or the carrying on of any occupation, trade, business or profession :

Provided that no such person as aforesaid shall by virtue of this sub-section be entitled to exemption from any such disability, liability, restriction, or condition as aforesaid if and so long as British subjects domiciled in Burma are by or under the law of the United Kingdom subject in the United Kingdom to a like disability, liability, restriction or condition imposed in

regard to the same subject matter by reference to the same principle of distinction.

(3) The provisions of sub-section (2) of this section shall apply in relation to British subjects domiciled in India and subjects of any Indian State as they apply in relation to British subjects domiciled in the United Kingdom, but with the substitution in the proviso to the said sub-section for references to the United Kingdom of references to British India or, as the case may be, that Indian State :

Provided that nothing in this sub-section shall affect any restriction lawfully imposed on the right of entry into Burma of persons who are British subjects domiciled in India or subjects of any Indian State, or any restriction lawfully imposed as a condition of allowing any such person to enter Burma.

(4) Notwithstanding anything in this section, if the Governor by public notification certifies that for the prevention of any grave menace to the peace or tranquillity of any part of Burma, or for the purposes of combating crimes of violence intended to overthrow the Government, it is expedient that the operation of the provisions of this section should be wholly or partially suspended in relation to any Act, then while the notification is in force the operation of those provisions shall be suspended accordingly.

The functions of the Governor under this sub-section shall be exercised by him in his discretion.

**45.** (1) No Act of the Legislature which imposes any liability to taxation shall be such as to discriminate against British subjects domiciled in the United Kingdom or India or subjects of any Indian State, or against companies incorporated whether before or after the passing of this Act by or under the laws of the United Kingdom or British India, and any Act passed or made in contravention of this section shall, to the extent of the contravention, be invalid. Taxation.

(2) Without prejudice to the generality of the foregoing provisions, an Act shall be deemed to be such as to discriminate against such persons or companies as aforesaid if it would result in any of them being liable to greater taxation than that to which they would have been liable if they were domiciled in Burma or incorporated by or under the laws of Burma, as the case may be.

**46.** (1) Subject to the following provisions of this Part of this Act, a company incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom, and the members of the governing body of any such company and the holders of its shares, stock, debentures, debenture stock, or bonds, and its officers, agents, and servants shall be deemed to comply with so much of any Act of the Legislature as imposes in regard to companies carrying on or proposing to carry on business in Burma requirements or conditions relating to or connected with— Companies.

(a) the place of incorporation of a company or the situation of its registered office, or the currency in which its capital or loan capital is expressed ; or

- (b) the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of holders of its shares, stock, debentures, debenture stock, or bonds, or of its officers, agents or servants :

Provided that no company or person shall by virtue of this sub-section be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the laws of the United Kingdom in regard to companies incorporated by or under the laws of Burma and carrying on or proposing to carry on business in the United Kingdom.

(2) If and in so far as any total or partial exemption from, or preferential treatment in respect of, taxation imposed on companies by or under any Act of the Legislature depends on compliance with conditions as to any of the matters mentioned in the last preceding sub-section, any company incorporated by or under the laws of the United Kingdom and carrying on business in Burma shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under the laws of Burma and carrying on business in the United Kingdom does not depend on compliance with conditions as to any of the matters so mentioned.

(3) The provisions of the two last preceding sub-sections shall apply in relation to companies incorporated by or under the laws of British India as they apply in relation to companies incorporated by or under the laws of the United Kingdom, with the substitution for references to the United Kingdom of references to British India.

(4) Subject to the following provisions of this Part of this Act, a British subject domiciled in the United Kingdom shall be deemed to comply with so much of any Act of the Legislature as imposes in regard to companies incorporated or proposed to be incorporated, whether before or after the passing of this Act, by or under the laws of Burma, any requirements or conditions relating to, or connected with, the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company or of holders of its shares, stock, debentures, debenture stock or bonds, or of its officers, agents or servants :

Provided that no person shall by virtue of this section be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated or proposed to be incorporated by or under the laws of the United Kingdom on British subjects domiciled in Burma.

(5) If and in so far as, in the case of any such companies as are mentioned in the last preceding sub-section, any total or partial exemption from, or preferential treatment in respect of, taxation imposed by or under any Act

of the Legislature depends on compliance with conditions as to any of the matters so mentioned, then, as regards such of the members of its governing body and such of the holders of its shares, stock, debentures, debenture stock or bonds, and such of its officers, agents, or servants, as are British subjects domiciled in the United Kingdom, any such company shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under those laws does not, as regards such of the members of a company's governing body, or such of the holders of its shares, stock, debentures, debenture stock or bonds, or such of its officers, agents, or servants, as are British subjects domiciled in Burma, depend on compliance with conditions as to any of the matters so mentioned.

(6) The provisions of the two last preceding sub-sections shall apply in relation to British subjects domiciled in British India and to subjects of any Indian State as they apply in relation to British subjects domiciled in the United Kingdom, with the substitution for references to the United Kingdom of references to British India or that Indian State, as the case may be.

**47.** (1) No ship registered in the United Kingdom shall be subjected by or under any Act of the Legislature to any treatment affecting either the ship herself, or her master, officers, crew, passengers or cargo, which is discriminatory in favour of ships registered in Burma, except in so far as ships registered in Burma are for the time being subjected by or under any law of the United Kingdom to treatment of a like character which is similarly discriminatory in favour of ships registered in the United Kingdom. Ships and aircraft.

(2) The provisions of this section shall apply in relation to ships registered in British India as they apply in relation to ships registered in the United Kingdom with the substitution for references to the United Kingdom of references to British India.

(3) This section shall apply in relation to aircraft as it applies in relation to ships.

(4) The provisions of this section are in addition to and not in derogation of the provisions of any of the preceding sections of this Part of this Act.

**48.** (1) Notwithstanding anything in any Act of the Legislature, companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom and carrying on business in Burma, shall be eligible for any grant, bounty or subsidy payable out of public moneys in Burma for the encouragement of any trade or industry to the same extent as companies incorporated by or under the laws of Burma are eligible therefor : Subsidies for the encouragement of trade or industry.

Provided that this sub-section shall not apply in relation to any grant, bounty or subsidy payable out of public moneys for the encouragement of any trade or industry, if and so long as under the law of the United Kingdom for the time being in force companies incorporated by or under the laws of Burma and carrying on business in the United Kingdom are not equally eligible with companies incorporated by or under the laws of the United

Kingdom for the benefit of any grant, bounty or subsidy payable out of public moneys in the United Kingdom for the encouragement of the same trade or industry.

(2) Notwithstanding anything in this Part of this Act, an Act of the Legislature may require, in the case of a company which at the date of the passing of that Act was not engaged in Burma in that branch of trade or industry which it is the purpose of the Act to encourage, that the company shall not be eligible for any grant, bounty or subsidy under the Act unless—

(a) the company is incorporated by or under the laws of Burma ;  
and

(b) such proportion, not exceeding one half, of the members of its governing body as the Act may prescribe are British subjects domiciled in Burma ; and

(c) the company gives such reasonable facilities for the training of British subjects domiciled in Burma as may be so prescribed.

(3) For the purposes of this section a company incorporated by or under the laws of the United Kingdom shall be deemed to be carrying on business in Burma if it owns ships which habitually trade to and from ports in Burma.

(4) The foregoing provisions of this section shall apply in relation to companies incorporated by or under the laws of British India as they apply in relation to companies incorporated by or under the laws of the United Kingdom with the substitution for references to the United Kingdom of references to British India.

Supple-  
mental.

**49.** The foregoing provisions of this Part of this Act shall apply in relation to any ordinance, order, bye-law, rule or regulation passed or made after the passing of this Act and having by virtue of any existing Indian or Burman law, or of any Act of the Legislature, the force of law, as they apply in relation to Acts of the Legislature, but, save as aforesaid, nothing in those provisions shall affect the operation of any existing Indian or Burman law.

Power to  
secure  
reciprocal  
treatment  
by conven-  
tion.

**50.** (1) If a convention is made between His Majesty's Government in the United Kingdom and the Government of Burma, whereby similarity of treatment is assured, in the United Kingdom to British subjects domiciled in Burma and to companies incorporated by or under the laws of Burma, and in Burma to British subjects domiciled in the United Kingdom and to companies incorporated by or under the laws of the United Kingdom, respectively, in respect of the matters, or any of the matters, with regard to which provision is made in the preceding sections of this Part of this Act, His Majesty may, if he is satisfied that all necessary legislation has been enacted both in the United Kingdom and in Burma for the purpose of giving effect to the convention, by Order in Council declare that the purposes of those sections are to such extent as may be specified in the Order sufficiently fulfilled by that convention and legislation, and, while any such Order is in force, the operation of those sections shall to that extent be suspended.

(2) As from the establishment of the Federation of India, the provisions of sub-section (1) of this section shall apply in relation to British subjects domiciled in British India and to companies incorporated by or under the laws of British India as they apply in relation to British subjects domiciled in the United Kingdom and companies incorporated by or under the laws of the United Kingdom, with the substitution for references to His Majesty's Government in the United Kingdom, and the United Kingdom, of references to the Federal Government and British India.

(3) An Order in Council under this section shall cease to have effect if and when the convention to which it relates expires or is terminated by either party thereto.

51. (1) No Bill or amendment which prescribes or empowers any authority to prescribe the professional or technical qualifications which are to be requisite for any purpose in Burma shall be introduced or moved in either Chamber of the Legislature without the previous sanction of the Governor in his discretion. Professional and technical qualifications in general.

(2) The Governor shall not give his sanction for the purposes of the preceding sub-section unless he is satisfied that the proposed legislation is so framed as to secure that no person who, immediately before the coming into operation of any disability, liability, restriction or condition to be imposed by or under that legislation, was lawfully practising any profession, carrying on any occupation, trade or business, or holding any office in Burma shall, except in so far as may be necessary in the interests of the public, be debarred from continuing to practise that profession, carry on that occupation, trade or business, or hold that office, or from doing anything in the course of that profession, occupation, trade or business, or in the discharge of the duties of that office, which he could lawfully have done if that disability, liability, restriction or condition had not come into operation.

(3) All regulations made under the provisions of any Act of the Legislature which prescribe the professional or technical qualifications which are to be requisite for any purpose in Burma, or impose by reference to any professional or technical qualification, any disability, liability, restriction or condition in regard to the practising of any profession, the carrying on of any occupation, trade or business, or the holding of any office in Burma shall, not less than four months before they are expressed to come into operation, be published in such manner as may be required by general or special directions of the Governor, and, if within two months from the date of the publication complaint is made to him that the regulations or any of them will operate unfairly as against any class of persons affected thereby, then, if he is of opinion that the complaint is well founded, he may, at any time before the regulations are expressed to come into operation, by public notification disallow the regulations or any of them.

In this sub-section the expression "regulations" includes rules, byelaws, orders and ordinances.

In the discharge of his functions under this sub-section the Governor shall exercise his individual judgment.

(4) If the Governor exercising his individual judgment by public notification directs that the provisions of the last preceding sub-section shall apply in relation to any existing Indian or Burman law, those provisions shall apply in relation to that law accordingly.

Medical  
qualifica-  
tions.

52. (1) So long as the condition set out in sub-section (3) of this section continues to be fulfilled, a British subject domiciled in the United Kingdom or Burma who, by virtue of a medical diploma granted to him in the United Kingdom, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not, by or under any law in force in Burma, be excluded from practising medicine, surgery or midwifery in Burma, or from being registered as qualified so to do, on any ground other than the ground that the diploma held by him does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and he shall not be so excluded on that ground unless the law of Burma makes provision for securing—

(a) that no proposal for excluding the holders of any particular diploma from practice or registration shall become operative until the expiration of twelve months after notice thereof has been given to the Governor and to the University or other body granting that diploma ; and

(b) that such a proposal shall not become operative or, as the case may be, shall cease to operate, if the Privy Council on an application made to them under the next succeeding sub-section determine that the diploma in question ought to be recognised as furnishing such a sufficient guarantee as aforesaid.

(2) If any University or other body in the United Kingdom which grants a medical diploma, or any British subject who holds such a diploma, is aggrieved by the proposal to exclude holders of that diploma from practice or registration in Burma, that body or person may make an application to the Privy Council, and the Privy Council, after giving to such authorities and persons both in Burma and in the United Kingdom as they think fit an opportunity of tendering evidence or submitting representations in writing, shall determine whether the diploma in question does or does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and shall notify their determination to the Governor, who shall communicate it to such authorities, and cause it to be published in such manner, as he thinks fit.

(3) The condition referred to in sub-section (1) of this section is that British subjects domiciled in Burma who hold a medical diploma granted after examination in British Burma shall not be excluded from practising medicine, surgery or midwifery in the United Kingdom or from being registered therein as qualified medical practitioners, except on the ground that that diploma does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and shall only be excluded on that ground so long as the law of the

United Kingdom makes provision for enabling any question as to the sufficiency of that diploma to be referred to and decided by the Privy Council.

(4) A medical practitioner entitled to practise or be registered in Burma by virtue of a diploma granted in the United Kingdom, or in the United Kingdom by virtue of a diploma granted in British Burma, shall not in the practice of his profession be subjected to any liability, disability, restriction or condition to which persons entitled to practise by virtue of diplomas granted in the other country are not subject.

(5) The foregoing provisions of this section shall, subject to the modifications hereinafter mentioned, apply in relation to British subjects domiciled in India who, by virtue of medical diplomas granted to them in British India or the United Kingdom, are, or are entitled to be, registered in the United Kingdom as qualified medical practitioners as they apply in relation to British subjects domiciled in the United Kingdom who, by virtue of medical diplomas granted in the United Kingdom, are, or are entitled to be, registered in the United Kingdom as qualified medical practitioners.

The said modifications are as follows, that is to say,—

(a) sub-section (3) shall not apply and the reference in sub-section (1) to the condition set out therein shall be deemed to be omitted ;

(b) any reference in sub-section (2) or sub-section (4) to the United Kingdom shall be construed as a reference to British India.

(6) Nothing in this section shall be construed as affecting any power of any recognised authority in the United Kingdom or Burma to suspend or debar any person from practice on the ground of misconduct, or to remove any person from a register on that ground.

(7) In this section the expression "diploma" includes any certificate, degree, fellowship, or other document or status granted to persons passing examinations.

**53.** A person who holds a commission from His Majesty as a medical officer in any branch of His Majesty's forces and is on the active list shall by virtue of that commission be deemed to be qualified to practise medicine, surgery and midwifery in Burma and be entitled to be registered in Burma as so qualified.

**54.** In this Part of this Act—

(a) references to companies incorporated by or under the laws of Burma include references to companies incorporated by or under the laws of British India and registered in Burma, but do not include references to companies so incorporated which were registered elsewhere ;

(b) references to companies incorporated by or under the laws of British India do not include references to companies registered in Burma.

Application  
to certain  
companies.

Medical  
officers of  
His  
Majesty's  
forces.



*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*

## PART XI.

### MISCELLANEOUS PROVISIONS AS TO RELATIONS WITH INDIA.

Financial  
settlement  
as between  
India and  
Burma.

**134.** Whereas it may appear that the distribution of property and liabilities effected by this Act and the Government of India Act, 1935<sup>1</sup>, as between India and Burma may result in an undue burden on the revenues of the Federation, His Majesty in Council may, if he thinks it just so to do, make provision for the payment to the revenues of the Federation out of the revenues of Burma, and for the charging on the revenues of Burma, of such periodical or other sums as may appear to him to be proper.

Provisions  
as to  
Customs  
duties on  
India-Burma  
Trade.

**135.** With a view to preventing undue disturbance of trade between India and Burma in the period immediately following the separation of India and Burma and with a view to safeguarding the economic interests of Burma during that period, His Majesty may by Order in Council give such directions as he thinks fit for those purposes with respect to the duties which are, while the Order is in force, to be levied on goods imported into or exported from India or Burma, and with respect to ancillary and related matters.

Relief in  
respect of tax  
on income  
taxable both  
in India and  
Burma.

**136.** His Majesty in Council may make provision for the grant of relief from any Burman tax on income in respect of income taxed or taxable by or under the law of the Federation of India.

Provisions  
as to  
monetary  
system.

**137.** His Majesty in Council may make such provision with respect to the monetary system of Burma and matters connected therewith or ancillary thereto as he thinks fit and in particular, but without prejudice to the generality of this section, such provision as may appear to him to be necessary or proper for the purpose of giving effect to any arrangements with respect to the said matters made before the commencement of this Act with the approval of the Secretary of State by the Governor of Burma in Council.

Provisions  
as to immi-  
gration from  
India.

**138.** His Majesty may by Order in Council direct that, during such period as may be specified in the Order, immigration into Burma from India shall be subject to such restrictions as may be specified in the Order (being such restrictions as may have been mutually agreed before the commencement of this Act between the Governor of Burma in Council and the Governor-General of India in Council and approved by the Secretary of State, or in default of agreement as may have been prescribed by the Secretary of State), and no other restrictions:

Provided that any such Order may be varied by a subsequent Order in Council in such manner as appears to His Majesty necessary to give effect to any agreement in that behalf made after the commencement of this Act by the Governor with the Governor-General of India or the Governor-General of India in Council.

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<sup>1</sup> *Supra.*

## PART XIV.

## MISCELLANEOUS.

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**148.** Notwithstanding the repeal of the Government of India Act, but subject to the provisions of this Act, all the law in force in Burma immediately before the commencement of this Act shall continue in force in Burma until altered or repealed or amended by the Legislature or other competent authority.

Existing law to continue in force.

**149.** His Majesty may by Order in Council to be made at any time after the passing of this Act provide that as from such date as may be specified in the Order any law in force in Burma shall, until repealed or amended by the Legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be consequential on the separation of India and Burma.

Adaptation of existing laws.

In this section the expression "law" does not include an Act of Parliament, but includes any ordinance, order, byelaw, rule or regulation having in Burma the force of law.

\* \* \* \* \*

**156.** (1) Whereas difficulties may arise in relation to the transition in Burma from the provisions of the Government of India Act to the provisions of this Act :

Power of His Majesty in Council to remove difficulties as respects Burma.

And whereas the nature of those difficulties and of the provision which should be made for meeting them cannot at the date of the passing of this Act be fully foreseen :

Now therefore, for the purpose of facilitating the said transition, His Majesty may by Order in Council—

- (a) direct that this Act and any provisions of the Government of India Act still in force shall in Burma, during such limited period as may be specified in the Order, have effect subject to such adaptations and modifications as may be so specified ;
- (b) make, with respect to a limited period so specified, such temporary provision as he thinks fit for ensuring that, while the said transition is being effected and during the period immediately following it, there are available to the Government of Burma sufficient revenues to enable its business to be carried on ; and
- (c) make such other temporary provisions for the purpose of removing any such difficulties as aforesaid as may be specified in the Order.

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<sup>1</sup> For explanation of the scope of sections 148 and 149 see the India and Burma (Existing Laws) Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 9).

(2) No Order in Council shall be made under this section after the expiration of six months from the commencement of this Act.

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Interpreta-  
tion.

**158.** (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

- “Burma” includes (subject to the exercise by His Majesty of any powers vested in him with respect to the alteration of the boundaries thereof) all territories which were immediately before the commencement of this Act comprised in India, being territories lying to the east of Bengal, the State of Manipur, Assam, and any tribal areas connected with Assam ;
- “British Burma” means so much of Burma as belongs to His Majesty ;
- “Secretary of State in Council” means Secretary of State in Council of India ;
- “borrow” includes the raising of money by the grant of annuities and “loan” shall be construed accordingly ;
- “debt” includes any liability in respect of any obligation to repay capital sums by way of annuities, and any liability under any guarantee, and “debt charges” shall be construed accordingly ;
- “existing Indian or Burman law” means any law, ordinance, order, byelaw, rule or regulation (as in force in Burma) passed or made before the commencement of this Act by any legislature, authority or person in any territories for the time being comprised in India, being a legislature, authority or person having power to make such a law ;
- “goods” includes all materials, commodities and articles ;
- “Governor-General in Council” means Governor-General of India in Executive Council ;
- “Local Government” means the local government of Burma within the meaning of the Government of India Act or any Act repealed by that Act in force at the relevant time ;
- “pension” in relation to persons in, or formerly in, the service of the Crown in India or Burma means a pension whether contributory or not, of any kind whatsoever payable to or in respect of any such person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund ;

“public notification” means a notification in the official Gazette of Burma ;

“railway” includes a tramway not wholly within a municipal area ;

“securities” include stock ;

“taxation” includes the imposition of any tax or impost whether general or local or special, and “tax” shall be construed accordingly.

(2) Any reference in this Act to Acts of the Legislature shall be construed as including a reference to an Ordinance made by the Governor or a Governor’s Act.

(3) Any reference in this Act to Acts of Parliament shall be construed as including a reference to any Order in Council made under Part XII of the Government of India Act, 1935, for making in any such Act adaptations and modifications appearing to be necessary or expedient in consequence of the provisions of that Act and this Act, and any power of the Legislature to amend or repeal an Act of Parliament shall extend to the amendment or repeal of any such Order.

(4) References in this Act to the taking of an oath include references to the making of an affirmation.

(5) As respects the period elapsing between the commencement of Part III of the Government of India Act, 1935, and the establishment of the Federation of India, any reference in this Act to the Federation shall be construed as a reference to British India, the Governor-General in Council or the Governor-General as the context and the circumstances may require, and any reference to the Governor-General shall, if the circumstances so require, be construed as including a reference to the Governor-General in Council.

(6) While any such agreement as is mentioned in section forty-seven of the Government of India Act, 1935, is in force, any reference in this Act to subjects of His Majesty shall be deemed to include a reference to Berari subjects of His Exalted Highness the Nizam of Hyderabad.

**159.** This Act shall, subject to any express provision to the contrary, come into force on such date<sup>1</sup> as His Majesty in Council may appoint under the Government of India Act, 1935, as the date of the commencement of Part III of that Act : Commence-  
ment.

Provided that if it appears to His Majesty in Council that it will not be practicable or convenient that all the provisions of this Act shall come into operation simultaneously on that date, His Majesty in Council may fix an earlier or a later date for the coming into operation, either generally or for particular purposes, of any particular provisions of this Act.

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<sup>1</sup> Part III of the Government of India Act, 1935, came into force on the 1st April, 1937, see footnote <sup>1</sup> on p. 61, *supra*.

THE MERCHANT SHIPPING (CARRIAGE OF MUNITIONS TO SPAIN) ACT, 1936.

(1 Edw. 8 & 1 Geo. 6, c. 1.)

*An Act to prohibit the discharge in or transshipment for Spanish territory of weapons and munitions of war and other articles from certain ships, to prohibit the carriage in such ships of such articles consigned to or destined for Spanish territory; and for purposes connected therewith.*

[3rd December, 1936.]

BE it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Prohibition  
of the  
discharge  
in and  
transship-  
ment for  
Spanish  
territory of  
munitions  
of war from  
certain ships.

1. (1) No article to which this Act applies shall be discharged at any port or place in Spanish territory or within the territorial waters adjacent thereto from a ship to which this Act applies, and no such article shall be transhipped on the high seas from any such ship into any vessel bound for any such port or place, and no such article consigned to or destined for any such port or place shall be taken on board or carried in any such ship.

(2) The articles to which this act applies are—

(a) all articles which were on the twenty-third day of November, nineteen hundred and thirty-six, prohibited to be exported from the United Kingdom by an Order in Council made by virtue of section eight of the Customs and Inland Revenue <sup>42 & 43 Vict.,</sup> Act, 1879, and section seventeen of the Finance Act, 1921 <sup>c. 21.</sup> (which relate to weapons and munitions of war and other articles); <sup>11 & 12</sup> Geo. 5, c. 32. and

(b) all articles which may after the passing of this Act be prohibited to be so exported by any such Order in Council and to which this Act is declared by that Order to apply.

(3) The ships to which this Act applies are—

(a) all British ships, except ships registered—

(i) in any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa and the Irish Free State, or

(ii) in any territory administered by His Majesty's Government in any of the Dominions aforesaid; and

(b) all other ships registered in, or licensed under the law of, any colony or British protectorate or any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom.

(4) If any article is discharged or transhipped from, or taken on board or carried in, any ship in contravention of this Act, any person being the owner, charterer or master of the ship shall, if he is privy to the contravention, be guilty of a misdemeanour.

(5) Section four hundred and forty-nine of the principal Act (which provides for the forfeiture of dangerous goods carried under a false description and in certain other cases) shall apply in relation to any ship to which this Act applies as if any articles carried in contravention of this Act were dangerous goods carried under a false description.

(6) Any officer mentioned in section seven hundred and twenty-three of the principal Act who has reason to suspect that a ship is contravening or has contravened the provisions of this Act shall, without prejudice to the powers conferred by that section, have the following powers, that is to say:—

- (a) he may go on board the ship and for that purpose may detain the ship or require it to stop or to proceed to some convenient place ;
- (b) he may require the master to produce any documents relating to any cargo which is being carried or has been carried on the ship ;
- (c) he may search the ship and examine the cargo and require the master or any member of the crew to open any package or parcel which he suspects to contain any articles to which this Act applies ;
- (d) he may make any other examination or inquiry which he deems necessary to ascertain whether this Act is being or has been contravened ;
- (e) if it appears to him that this Act is being or has been contravened, he may, without summons, warrant or other process, take the ship and her cargo and her master and crew to the nearest or most convenient port in a country to which this Act extends, in order that the alleged contravention may be adjudicated upon by a competent court.

(7) If any ship duly required under the last foregoing sub-section to stop or to proceed to some convenient place fails to comply with that requirement, the master of the ship shall be guilty of a misdemeanour, and if a master or any other person fails to do any other thing duly required of him under that sub-section or obstructs any officer in the exercise of his powers under that sub-section, he shall be liable to a fine not exceeding one hundred pounds.

(8) Anything which has been done before the commencement of this Act in purported exercise of any such power as is mentioned in sub-section (6) of this section, and which would have been lawfully done if this Act had come into operation on the twenty-third day of November, nineteen hundred and thirty-six, shall be deemed to have been lawfully done.

*His Majesty's Declaration of Abdication Act, 1936.* [1 Edw. 8 & 1 Geo. 6, c. 3.]

(9) For the purposes of this Act the expression "Spanish territory" shall include the Spanish zone of Morocco.

Short title,  
construction,  
interpreta-  
tion, extent  
and duration.

2. (1) This Act may be cited as the Merchant Shipping (Carriage of Munitions to Spain) Act, 1936.

(2) This Act and the Merchant Shipping Acts, 1894 to 1932, shall be construed as one, and those Acts and this Act may be cited together as the Merchant Shipping Acts, 1894 to 1936.

(3) In this Act the expression "the principal Act" means the <sup>1</sup>Merchant Shipping Act, 1894. 57 & 58 Vict., c. 60.

(4) This Act shall extend, not only to the United Kingdom, but also to—

(a) the Isle of Man, the Channel Islands, British India, Newfoundland and every colony; and

(b) every country to which Part XIII of the principal Act for the time being extends by virtue of an Order in Council made under section five of the <sup>1</sup>Foreign Jurisdiction Act, 1890. 53 & 54 Vict., c. 37.

(5) This Act shall continue in force until His Majesty by Order in Council is pleased to declare that it is no longer necessary or expedient that it should continue in force:

Provided that on the expiration of this Act sub-section (2) of section thirty-eight of the <sup>1</sup>Interpretation Act, 1889, (which relates to the effect of repeals) shall apply as if this Act had been repealed by another Act. 52 & 53 Vict., c. 63.

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HIS MAJESTY'S DECLARATION OF ABDICATION ACT, 1936.

(1 Edw. 8 & 1 Geo. 6, c. 3.)

*An Act to give effect to His Majesty's declaration of abdication; and for purposes connected therewith.*

[11th December, 1936.]

WHEREAS His Majesty by His Royal Message of the tenth day of December in this present year has been pleased to declare that He is irrevocably determined to renounce the Throne for Himself and His descendants, and has for that purpose executed the Instrument of abdication set out in the Schedule to this Act, and has signified His desire that effect thereto should be given immediately:

And whereas, following upon the communication to His Dominions of His Majesty's said declaration and desire, the Dominion of Canada pursuant

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<sup>1</sup> See Vol. II of this publication.

22 & 23  
Geo. 5, c. 4.

to the provisions of section four of the Statute of Westminster, 1931, has requested and consented to the enactment of this Act, and the Commonwealth of Australia, the Dominion of New Zealand, and the Union of South Africa have assented thereto :

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. (1) Immediately upon the Royal Assent being signified to this Act the Instrument of Abdication executed by His present Majesty on the tenth day of December, nineteen hundred and thirty-six, set out in the Schedule to this Act, shall have effect and thereupon His Majesty shall cease to be King and there shall be a demise of the Crown, and accordingly the member of the Royal Family then next in succession to the Throne shall succeed thereto and to all the rights, privileges, and dignities thereunto belonging.

Effect of His  
Majesty's  
declaration  
of abdica-  
tion.

12 & 13  
Will. 3, c. 2.

(2) His Majesty, His issue, if any, and the descendants of that issue, shall not after His Majesty's abdication have any right, title or interest in or to the succession to the Throne, and section one of the <sup>1</sup>Act of Settlement shall be construed accordingly.

12 Geo. 3,  
c. 11.

(3) The Royal Marriages Act, 1772, shall not apply to His Majesty after His abdication nor to the issue, if any, of His Majesty or the descendants of that issue.

2. This Act may be cited as His Majesty's Declaration of Abdication Act, 1936.

#### SCHEDULE.

I, Edward the Eighth, of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Emperor of India, do hereby declare My irrevocable determination to renounce the Throne for Myself and for My descendants, and My desire that effect should be given to this Instrument of Abdication immediately.

In token whereof I have hereunto set My hand this tenth day of December, nineteen hundred and thirty-six, in the presence of the witnesses whose signatures are subscribed.

EDWARD R. I.

Signed at Fort Belvedere  
in the presence of

ALBERT.

HENRY.

GEORGE.

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<sup>1</sup> See Vol. I of this publication.



THE INDIA AND BURMA (EXISTING LAWS) ACT, 1937.

(1 Edw. 8 & 1 Geo. 6, c. 9.)

*An Act to explain and amend sections two hundred and ninety-two and two hundred and ninety-three of the Government of India Act, 1935, and sections one hundred and forty-eight and one hundred and forty-nine of the Government of Burma Act, 1935.*

[18th February, 1937.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Continuance  
and adapta-  
tion of  
certain  
existing  
laws in  
India and  
Burma.

1. (1) For the purposes of sections two hundred and ninety-two and two hundred and ninety-three of the Government of India Act, 1935,<sup>1</sup> which provide for the existing laws of British India to continue in force therein after the date of the commencement of Part III of the said Act, subject to the power of His Majesty in Council to make such adaptations and modifications in any such law as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of the said Act,—

26 Geo. 5 &  
1 Edw. 8,  
c. 2.

- (i) a law passed or made before the said date by a Legislature or other competent Authority in British India, and not previously repealed, is, for the removal of doubts, hereby declared to be a law in force immediately before that date, notwithstanding that it, or parts of it, may not then be in operation, either at all or in particular areas ;
- (ii) any such law which immediately before the said date has extra-territorial effect as well as effect in British India shall, subject to any such adaptations and modifications as aforesaid, continue to have extra-territorial effect ;
- (iii) the power of His Majesty in Council to make in an existing Indian law such adaptations and modifications as aforesaid shall be deemed to include power to declare any such law, or any part thereof, to be repealed, if it appears to His Majesty in Council that its continuance is unnecessary or inexpedient in view of the provisions of the said Act ;
- (iv) nothing in the said sections shall be construed as continuing any temporary Act in force beyond the date fixed for its expiration.

(2) Paragraphs (i) to (iv) of the preceding sub-section shall apply also in relation to sections one hundred and forty-eight and one hundred and forty-nine of the Government of Burma Act, 1935<sup>1</sup> (being the sections of that

26 Geo. 5. &  
1 Edw. 8,  
c. 3.

<sup>1</sup> *Supra.*

Act corresponding to the said sections two hundred and ninety-two and two hundred and ninety-three), with the following adaptations—

- (a) references to British India and to an Indian law shall be construed respectively as references to Burma and to a Burma law ;
- (b) for the words “in view of the provisions of the said Act” there shall be substituted the words “in view of the separation of India and Burma.”

2. This Act may be cited as the India and Burma (Existing Laws) Act, Short title. 1937.

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THE EAST INDIA LOANS ACT, 1937.

(1 Edw. 8 & 1 Geo. 6, c. 14.)

ARRANGEMENT OF SECTIONS.

SECTION.

- 1. Borrowing powers of Secretary of State.
- 2. Provisions as to India stock.
- 3. Composition for stamp duty on, and other provisions as to, bonds and bills.
- 4. Power of Secretary of State to make arrangements with Bank for issue and management of securities.
- 5. *Not reprinted.*
- 6. Minor amendments.
- 7. Provisions as to existing securities.
- 8. Expenses of Secretary of State to be defrayed out of Indian revenues.
- 9. Provisions as to sinking fund.
- 10. Returns to be presented to Parliament.
- 11. Provision as to Members of the House of Commons.
- 12. Short title, commencement, repeal and construction.

SCHEDULE : *Not reprinted.*

*An Act to authorise the Secretary of State to borrow in sterling on behalf of the Governor-General of India in Council during the period with respect to which Part XIII of the Government of India Act, 1935, applies ; to repeal and reproduce with modifications and adaptations enactments relating to certain financial obligations of the Secretary of State in Council of India, and otherwise to amend the law in relation to certain of those obligations ; and for purposes connected with the matters aforesaid.*

[19th March, 1937.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons,

in this present Parliament assembled, and by the authority of the same, as follows :—

Borrowing  
powers of  
Secretary  
of State.

1. (1) During the period with respect to which Part XIII of the Government of India Act, 1935<sup>1</sup>, applies, the Secretary of State may borrow in sterling on behalf of the Governor General of India in Council by the issue, on such terms as to interest, redemption, conversion and otherwise as the Secretary of State may think fit, of securities of any one or more of the following kinds, that is to say, stock, bonds, or bills :

26 Geo. 5 & 1  
Edw. 8,  
c. 2.

Provided that the aggregate nominal amount outstanding of the securities issued under this section and the enactments repealed by this Act shall not at any time exceed three hundred and twenty million pounds.

(2) The Secretary of State may issue such securities, and on such terms, as aforesaid to be applied directly in exchange for, or discharge of, any sterling obligations of the Government of India or any bonds, debentures or debenture stock issued under the guarantee of the Secretary of State in Council or the Governor General in Council by any railway company under engagement with the Government of India, and any such issue shall for the purposes of the preceding sub-section be deemed to be a borrowing.

Provisions  
as to India  
stock.

2. (1) In this section the expression "India stock" means India stock issued under this Act or under any of the enactments repealed by this Act.

(2) There shall be kept at the India Office or at the Bank of England books wherein entries may be made of India stock and wherein transfers of India stock or of any part thereof may be entered and registered.

Any transfer so made shall be signed by the party making the transfer or, if he is absent, by his attorney, thereunto lawfully authorised by writing under his hand attested by a credible witness, and the person to whom the transfer is made may, if he thinks fit, underwrite his acceptance thereof in the books.

(3) The following enactments, that is to say—

The <sup>2</sup>India Stock Transfer Act, 1862 (which relates to the registration and transfer of India stock at the Bank of Ireland) ;

25 & 26 Vict.,  
c. 7.

The <sup>2</sup>India Stock Certificate Act, 1863 (which relates to the issue of stock certificates in respect of India stock) ;

26 & 27 Vict.,  
c. 73.

Sections three to sixteen of the <sup>2</sup>East India Unclaimed Stock Act, 1885 (which relate to the method in which unclaimed stock and dividends thereon are to be dealt with) ; and

48 & 49 Vict.,  
c. 25.

Sub-sections (1) to (3) of section six of the Government of India (Amendment) Act, 1916 <sup>3</sup>(which relate to the transfer of India stock by deed),

6 & 7 Geo. 5,  
c. 37.

shall apply to all India stock as defined by this section and to no other stock, and the expression "India stock" in those enactments, and in any regulations in force thereunder at the commencement of this Act, shall be construed accordingly :

<sup>1</sup> *Supra.*

<sup>2</sup> *See* Vol. I of this publication.

<sup>3</sup> *See* Vol. III of this publication.

Provided that, after the commencement of this Act, anything authorised by any of the said enactments to be done by or to the Secretary of State in Council may be done by or to the Secretary of State, any account of the Secretary of State in Council shall be deemed to be an account of the Secretary of State, and any money authorised or required to be paid by or to the Secretary of State in Council, or out of or to the revenues of India, shall be payable out of or to the revenues of the Governor General in Council or, after the establishment of the Federation of India, the revenues of the Federation.

55 & 56 Vict.,  
c. 39.  
52 & 53 Vict.,  
c. 6.  
(4) Sections two to seven and nine of the National Debt (Stockholders Relief) Act, 1892, and sub-sections (1) to (5) of section four of the National Debt Act, 1889, shall apply, and shall be deemed to have always applied, to India stock.

(5) In the event of the redemption of any India stock, the books relating thereto may be closed for transfers for not more than one month immediately preceding the redemption date.

(6) No stamp duty shall be payable in the United Kingdom in respect of any transfer of, or certificate, dividend warrant or coupon relating to, India stock.

54 & 55 Vict.,  
c. 39.  
(7) In the exemption numbered (10) under the heading "Receipt given for, or upon the payment of, money amounting to two pounds or upwards" in the First Schedule to the Stamp Act, 1891, after the words "Secretary of State in Council of India, or" there shall be inserted the words "in India stock as defined in section two of the East India Loans Act, 1937, or in the stocks and funds".

(8) No notice of any trust, whether express, implied or constructive, shall be receivable by the Secretary of State or by the Bank of England or the Bank of Ireland in respect of any India stock.

(9) A reference in this section to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended by, or under, any other enactment, including this Act.

3. (1) The Treasury and the Secretary of State may agree for the payment by the Secretary of State on behalf of the Governor General in Council of an annual composition in lieu of stamp duty on any bonds and bills issued under this Act, or under any enactment repealed by this Act, and bonds and bills to which any such agreement relates shall be exempt from stamp duty in the United Kingdom. Composition for stamp duty on, and other provisions as to, bonds and bills.

(2) Bonds issued under this Act shall be signed by two of the advisers of the Secretary of State appointed under Part XI of the Government of India Act, 1935, and shall be countersigned by the Secretary of State or one of his Under-Secretaries or Deputy or Assistant Under-Secretaries, and bills so issued shall be signed by one of the Under-Secretaries or Deputy or Assistant Under-Secretaries of State.

All signatures required by this sub-section may be impressed or affixed by machinery or otherwise in such manner as the Secretary of State may from time to time direct.

(3) Moneys due and unclaimed in respect of bonds and bills issued under this Act or any enactment repealed by this Act shall be dealt with in like manner, as nearly as may be, as unclaimed dividends due in respect of India stock so issued.

Power of Secretary of State to make arrangements with Bank for issue and management of securities.

4. (1) The Secretary of State may arrange with the Bank of England for the Bank to undertake the creation and issue of, the payment of dividends or interest on, and the general management and the redemption or conversion of, any stock or other securities issued under this Act or under any enactment repealed by this Act.

(2) Any arrangement made by the Secretary of State in Council with the Bank of England or the Bank of Ireland under any enactment repealed or applied by this Act with respect to any such stock or other securities shall continue to have effect and shall be deemed to have been made by the Secretary of State under this Act or, as the case may be, under the Act in question as so applied.

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Minor amendments.

6. The consequential or other minor amendments set out in the second column of the First Schedule<sup>2</sup> to this Act shall be made in the enactments specified in the first column of that Schedule.

Provisions as to existing securities.

7. Anything which under the terms of, or of any contract relating to, any stock or other security issued under any of the enactments repealed by this Act is authorised to be done by or to the Secretary of State in Council may be done by or to the Secretary of State.

Expenses of Secretary of State to be defrayed out of Indian revenues.

8. (1) All sums payable by the Secretary of State under this Act or under any other Act relating to India stock (as defined in section two of this Act), whether to the Treasury, a Bank or any other person, shall, before the establishment of the Federation of India, be liabilities of, and be defrayed out of the revenues of, the Governor General in Council, and thereafter shall be liabilities of, and be defrayed out of the revenues of, the Federation.

(2) Nothing in this Act affects the provisions of sub-section (1) of section one hundred and seventy-eight of the Government of India Act, 1935<sup>3</sup>, declaring that certain liabilities of the Secretary of State in Council are to be liabilities of the Federation secured upon the revenues of the Federation and of all the Provinces.

Provisions as to sinking fund.

9. Whereas under the East Indian Railway (Redemption of Annuities) Act, 1879,<sup>4</sup> the East Indian Railway (Redemption of Annuities) Act, 1881<sup>4</sup>,  
the Eastern Bengal Railway Company Purchase Act, 1884, and section twenty-five of the East India Unclaimed Stock Act, 1885<sup>4</sup>, securities of a nominal amount of thirteen million one hundred and seventy-five thousand five hundred and ten pounds thirteen shillings and four pence were issued by or on behalf of the Secretary of State in Council in redemption of certain railway annuities and debenture stock :  
42 & 43 Vict. c. 43.  
44 & 45 Vict. c. 53.  
47 & 48 Vict. c. cclv.

<sup>1</sup> Section 5 is an amending provision and has not been reprinted.

<sup>2</sup> Amending Schedule. Not reprinted.

<sup>3</sup> *Supra*.

<sup>4</sup> See Vol. I of this publication.

And whereas under those Acts the Secretary of State in Council has from time to time set apart sums to be applied to the redemption of debt and has thereby reduced the public debt of India by the amount of ten million two hundred and ninety-seven thousand three hundred and twenty pounds five shillings and four pence :

Now, therefore, until by virtue of the action to be taken by the Secretary of State under this section the public debt of India has been further reduced by the amount of two million eight hundred and seventy-eight thousand one hundred and ninety pounds and eight shillings, the Secretary of State shall set apart annually a sum of two hundred thousand pounds to be applied in such manner and at such time or times as he may think fit in reduction of the debt contracted under this Act and the enactments repealed by this Act.

10. (1) As soon as may be after the end of each half-year ending after the commencement of this Act the Secretary of State shall lay before Parliament a return of—

Returns to be presented to Parliament.

- (a) the sterling loans raised under this Act and the enactments repealed by this Act which are outstanding at the commencement of the half-year stating the rates of interest and the total amount payable thereon and the date of the termination thereof ;
- (b) the debt incurred under this Act during the half-year and the moneys raised thereby, the loans paid off or discharged during the half-year and the loans outstanding at the close of the half-year :
- (c) the debt redeemed, and remaining to be redeemed, under the last preceding section.

(2) In respect of the half-year ending immediately before the commencement of this Act the Secretary of State shall lay before Parliament the like returns as, but for the dissolution of the Council of India and any repeal effected by this Act, it would have been the duty of the Secretary of State in Council so to lay.

22 Geo. 3,  
c. 45.  
41 Geo. 3,  
c. 52.

11. None of the provisions of the House of Commons (Disqualifications) Act, 1782, or the House of Commons (Disqualifications) Act, 1801, shall be construed so as to extend to any subscription or contribution to any loan raised under this Act, or any previous Act relating to East India loans.

Provision as to Members<sup>1</sup> of the House of Commons.

12. (1) This Act may be cited as the East India Loans Act, 1937.

(2) This Act shall come into force on the first day of April, nineteen hundred and thirty-seven.

Short title, commencement, repeal and construction.

(3) The enactments specified in the second column of the Second Schedule<sup>1</sup> to this Act are hereby repealed to the extent specified in the third column of that Schedule.

<sup>1</sup> Repealing Schedule. Not reprinted.

(4) For the purposes of section six of the Government of Ireland Act, 1920, this Act shall, so far as it relates to matters within the powers of the <sup>5</sup>, c. 67. Parliament of Northern Ireland, be deemed to be an Act passed before the appointed day within the meaning of that section.

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### THE GENEVA CONVENTION ACT, 1937.

(1 Edw. 8 & 1 Geo. 6, c. 15.)

*An Act to enable effect to be given to Article twenty-eight of the International Convention for the amelioration of the condition of the wounded and sick in armies in the field done at Geneva on the twenty-seventh day of July, nineteen hundred and twenty-nine, and for purposes connected therewith.*

[19th March, 1937.]

WHEREAS His Majesty has ratified an International Convention for the amelioration of the condition of the wounded and sick in armies in the field which was done at Geneva on the twenty-seventh day of July, nineteen hundred and twenty-nine :

And whereas, in order to give effect to Article twenty-eight of the said Convention, and for purposes connected therewith, it is expedient to make such amendments in the law as are contained in this Act :

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Prohibition  
of use of  
certain  
designs and  
words.

1. (1) It shall not be lawful for any person, without the authority of the Board of Trade, to use for the purposes of his trade or business, or for any other purpose whatsoever—

- (a) any design consisting of a white or silver cross on a red ground, none of the limbs of which extends to the margin of the ground, being the cross comprised in the Arms of the Swiss Confederation ; or
- (b) any design being a colourable imitation of the design mentioned in the last foregoing paragraph ; or
- (c) any design being a colourable imitation of the heraldic emblem of the red cross on a white ground mentioned in sub-section (1) of section one of the <sup>1</sup>Geneva Convention Act, 1911, or <sup>1</sup> & 2 Geo. 5, any words so nearly resembling the words " Red Cross " or <sup>c.</sup> 20. " Geneva Cross " as to be capable of being understood as referring to the said emblem.

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<sup>1</sup> See Vol. II of this publication.

(2) If any person contravenes the provisions of the last foregoing sub-section, he shall, subject as hereafter provided, be guilty of an offence under this Act and liable on summary conviction to a fine not exceeding ten pounds and to forfeit any goods upon or in connection with which the design or words was or were used.

(3) Nothing in this section shall apply to a trade mark registered before the twenty-third day of December, nineteen hundred and thirty-one, and consisting of or containing any such design as is mentioned in paragraph (a) or paragraph (b) of sub-section (1) of this section; and where a person is charged with using such a design for any purpose and it is proved that he used it otherwise than as or as part of a trade mark registered as aforesaid, it shall be a defence for him to prove—

(a) that he lawfully used that design for that purpose before the said twenty-third day of December; or

(b) in a case where he is charged with using the design upon goods, that the design had been applied to the goods before he acquired them by some other person who had manufactured or dealt with the goods in the course of trade, and that that other person lawfully used the design upon similar goods before the said twenty-third day of December.

(4) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(5) Proceedings under this section shall not be instituted in England without the consent of the Attorney-General or in Northern Ireland without the consent of the Attorney-General for Northern Ireland.

(6) The authority of the Board of Trade under this section may be given by the President, or a Secretary, Under Secretary or Assistant Secretary, of the Board, or any person authorised in that behalf by the President of the Board.

2. Notwithstanding anything in any enactment or rule of law, the Parliament of the Commonwealth of Australia shall have power to pass a law to give effect to all the provisions of Article twenty-eight of the said Convention, and any such law may enact—

Provision  
as to  
Australia.

(a) that the provisions thereof shall extend, not only to the Commonwealth of Australia but also to any territories which are administered under the authority of His Majesty's Government in the Commonwealth of Australia or in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by that Government; and



(b) that the Geneva Convention Act, 1911<sup>1</sup>, shall cease to extend to the Commonwealth of Australia and to any such territories as aforesaid to which the provisions of the said law extend.

Provision as  
to other  
parts of  
British  
Empire.

3. His Majesty may by Order in Council provide that section one of this Act shall extend, subject to such modifications (if any) as may be specified in the Order, to the Isle of Man, any of the Channel Islands, Newfoundland or any colony.

Short title  
and citation.

4. This Act may be cited as the Geneva Convention Act, 1937, and this Act and the Geneva Convention Act, 1911<sup>1</sup>, may be cited together as the Geneva Conventions Acts, 1911 and 1937.

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#### THE REGENCY ACT, 1937.

(1 Edw. 8 & 1 Geo. 6, c. 16.)

*An Act to make provision for a Regency in the event of the Sovereign being on His Accession under the age of eighteen years, and in the event of the incapacity of the Sovereign through illness, and for the performance of certain of the royal functions in the name and on behalf of the Sovereign in certain other events ; to repeal the Lords Justices Act, 1837 ; and for purposes connected with the matters aforesaid.*

[19th March, 1937.]

WHEREAS Your Majesty, by Your Majesty's Royal Message to both Houses of Parliament, has been pleased to recommend that provision should be made for a Regency in certain events :

And whereas Your Majesty in the same Message put both Houses of Parliament in mind of the difficulties which arose in relation to the exercise of the Royal Authority at the time of the illness of His late Majesty King George the Fifth in the year nineteen hundred and twenty-eight and of His last illness in the month of January nineteen hundred and thirty-six, and recommended that Parliament should consider whether it be not expedient to make permanent provision for the purpose of securing the exercise of the Royal Authority as well in the event of the incapacity of the Sovereign as in the event of the minority of the Sovereign on His Accession and in certain other circumstances :

Now therefore, we, Your Majesty's most dutiful and loyal subjects, the Lords Spiritual and Temporal, and the Commons, in Parliament assembled, do most humbly beseech Your Majesty that it be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent

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<sup>1</sup> See Vol. II of this publication.

of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. (1) If the Sovereign is, at His Accession, under the age of eighteen years, then, until He attains that age, the royal functions shall be performed in the name and on behalf of the Sovereign by a Regent.

Regency while the Sovereign is under eighteen.

(2) For the purpose of any enactment requiring any oath or declaration to be taken, made, or subscribed, by the Sovereign on or after His Accession, the date on which the Sovereign attains the age of eighteen years shall be deemed to be the date of His Accession.

2. (1) If the following persons or any three or more of them, that is to say, the wife or husband of the Sovereign, the Lord Chancellor, the Speaker of the House of Commons, the Lord Chief Justice of England, and the Master of the Rolls, declare in writing that they are satisfied by evidence which shall include the evidence of physicians that the Sovereign is by reason of infirmity of mind or body incapable for the time being of performing the royal functions or that they are satisfied by evidence that the Sovereign is for some definite cause not available for the performance of those functions, then, until it is declared in like manner that His Majesty has so far recovered His health as to warrant His resumption of the royal functions or has become available for the performance thereof, as the case may be, those functions shall be performed in the name and on behalf of the Sovereign by a Regent.

Regency during total incapacity of the Sovereign.

(2) A declaration under this section shall be made to the Privy Council and communicated to the Governments of His Majesty's Dominions and to the Government of India.

3. (1) If a Regency becomes necessary under this Act, the Regent shall be that person who, excluding any persons disqualified under this section, is next in the line of succession to the Crown.

The Regent.

(2) A person shall be disqualified from becoming or being Regent, if he is not a British subject of full age and domiciled in some part of the United Kingdom, or is a person who would, under section two of the <sup>1</sup>Act of Settlement, be incapable of inheriting, possessing, and enjoying the Crown; and section three of the Act of Settlement shall apply in the case of a Regent as it applies in the case of a Sovereign.

12 & 13 Will.  
3, c. 2.

(3) If any person who would at the commencement of a Regency have become Regent but for the fact that he was not then of full age becomes of full age during the Regency, he shall, if he is not otherwise disqualified under this section, thereupon become Regent instead of the person who has theretofore been Regent.

(4) If the Regent dies or becomes disqualified under this section, that person shall become Regent in his stead who would have become Regent if the events necessitating the Regency had occurred immediately after the death or disqualification.

<sup>1</sup> See Vol. I of this publication.

(5) Section two of this Act shall apply in relation to a Regent with the substitution for references to the Sovereign of references to the Regent, and for the words "those functions shall be performed in the name and on behalf of the Sovereign by a Regent" of the words "that person shall be Regent who would have become Regent if the Regent had died".

Oaths to be taken by, and limitations of power of, Regent.

4. (1) The Regent shall, before he acts in or enters upon his office, take and subscribe before the Privy Council the oaths set out in the Schedule to this Act, and the Privy Council are empowered and required to administer those oaths and to enter them in the Council Books.

(2) The Regent shall not have power to assent to any Bill for changing the order of succession to the Crown or for repealing or altering an Act of the fifth year of the reign of Queen Anne made in Scotland entitled "An Act for Securing the Protestant Religion and Presbyterian Church Government".

Guardianship, etc., of Sovereign during Regency.

5. During a Regency, unless Parliament otherwise determines,—

- (a) if the Sovereign is under the age of eighteen years, and unmarried, His mother, if she is living, shall have the guardianship of His person ;
- (b) if the Sovereign, being married, is under the age of eighteen years or has been declared under this Act to be incapable for the time being of performing the royal functions, the wife or husband of the Sovereign, if of full age, shall have the guardianship of the person of the Sovereign ;
- (c) the Regent shall, save in the cases aforesaid, have the guardianship of the person of the Sovereign ; and the property of the Sovereign, except any private property which in accordance with the terms of any trust affecting it is to be administered by some other person, shall be administered by the Regent.

Power to delegate royal functions to Counsellors of State.

6. (1) In the event of illness not amounting to such infirmity of mind or body as is mentioned in section two of this Act, or of absence or intended absence from the United Kingdom, the Sovereign may, in order to prevent delay or difficulty in the despatch of public business, by Letters Patent under the Great Seal, delegate, for the period of that illness or absence, to Counsellors of State such of the royal functions as may be specified in the Letters Patent, and may in like manner revoke or vary any such delegation :

Provided that no power to dissolve Parliament otherwise than on the express instructions of the Sovereign (which may be conveyed by telegraph), or to grant any rank, title or dignity of the peerage may be delegated.

(2) The Counsellors of State shall be the wife or husband of the Sovereign (if the Sovereign is married), and the four persons who, excluding any persons disqualified under this Act from becoming Regent, are next in the line of succession to the Crown, or if the number of such persons next in the line of succession is less than four, then all such persons.

(3) Any functions delegated under this section shall be exercised jointly by the Counsellors of State, or by such number of them as may be specified in the Letters Patent, and subject to such conditions if any, as may be therein prescribed.

(4) The provisions of this section shall apply in relation to a Regent with the substitution for references to the Sovereign of references to the Regent, so, however, that in relation to a Regent sub-section (2) of this section shall have effect as if after the word "next", where that word first occurs therein, there were inserted the words "after the Regent".

(5) Any delegation under this section shall cease on the demise of the Crown or on the occurrence of any events necessitating a Regency or a change of Regent.

Repeal of  
7 Will. 4 & 1.  
Vict., c. 72.

7. The Lords Justices Act, 1837, is hereby repealed.

8. (1) This Act may be cited as the Regency Act, 1937.

Short title  
and inter-  
pretation.

(2) In this Act, save as otherwise expressly provided, the expression "royal functions" includes all powers and authorities belonging to the Crown, whether prerogative or statutory, together with the receiving of any homage required to be done to His Majesty.

## SCHEDULE.

Section 4.

### OATHS TO BE TAKEN BY THE REGENT.

1. I swear that I will be faithful and bear true allegiance to [*here insert the name of the Sovereign*] his heirs and successors according to law. So help me God.

2. I swear that I will truly and faithfully execute the office of Regent, and that I will govern according to law, and will, in all things, to the utmost of my power and ability, consult and maintain the safety, honour, and dignity of [*here insert the name of the Sovereign*] and the welfare of his people. So help me God.

3. I swear that I will inviolably maintain and preserve in England and in Scotland the Settlement of the true Protestant religion as established by law in England and as established in Scotland by the laws made in Scotland in prosecution of the Claim of Right, and particularly by an Act intitled "An Act for Securing the Protestant Religion and Presbyterian Church Government" and by the Acts passed in the Parliament of both Kingdoms for Union of the two Kingdoms, together with the Government, Worship, Discipline, Rights, and Privileges of the Church of Scotland. So help me God.

## THE RESERVE FORCES ACT, 1937.

(1 Edw. 8 &amp; 1 Geo. 6, c. 17.)

*An Act to amend section one of the Reserve Forces and Militia Act, 1898, by extending the period of liability to be called out on permanent service thereunder.*

[19th March, 1937.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. The liability to be called out under section one of the <sup>1</sup>Reserve Forces and Militia Act, 1898, may, if it is so agreed, extend to the first five years of a man's service in the first class of the Army Reserve, or to the residue unexpired of the term of his original enlistment, whichever is the less. Amendment of s. 1 of 61 & 62 Vict., c. 9.

Short title  
and citation.

2. This Act may be cited as the Reserve Forces Act, 1937, and the Reserve Forces Acts, 1882 to 1907, and this Act may be cited together as the Reserve Forces Acts, 1882 to 1937.

## THE EMPIRE SETTLEMENT ACT, 1937.

(1 Edw. 8 &amp; 1 Geo. 6, c. 18.)

*An Act to amend the Empire Settlement Act, 1922.*

[19th March, 1937.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Amendment  
as to power  
of Secretary  
of State to  
co-operate  
in schemes.

1. (1) The period beyond which the liability of the Secretary of State to make contributions under schemes agreed under section one of the principal Act is not to extend [which, by proviso (c) to sub-section (3) of that section, is limited to expire on the thirty-first day of May, nineteen hundred and thirty-seven] shall be extended so as to expire on the thirty-first day of May, nineteen hundred and fifty-two ;

Provided that the aggregate amount expended by the Secretary of State under any such scheme or schemes shall not exceed one million five hundred thousand pounds in the financial year commencing on the first day of April, nineteen hundred and thirty-seven or any subsequent financial year, exclu-

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<sup>1</sup> See Vol. II of this publication.

sive of the amount of any sums received by way of interest on or repayment of advances previously made.

(2) Notwithstanding anything in proviso (b) to the said sub-section (3) (which limits the contribution of the Secretary of State to half the expenses of such a scheme as aforesaid), the Secretary of State may contribute an amount not exceeding three-quarters of the expenses of any such scheme except—

(a) a development or land settlement scheme ; or

(b) a scheme towards the expenses of which the Government of a part of His Majesty's oversea dominions have agreed to contribute

2. (1) This Act may be cited as the Empire Settlement Act, 1937.

12 & 13 Geo.  
5, c. 13.

(2) In this Act the expression "the principal Act" means the Empire Settlement Act, 1922.

Short title,  
interpreta-  
tion and  
construction.

(3) This Act shall be construed as one with the principal Act, and that Act and this Act may be cited together as the Empire Settlement Acts, 1922 and 1937.

THE MERCHANT SHIPPING (SPANISH FRONTIERS OBSERVATION) ACT, 1937.

(1 Edw. 8 & 1 Geo. 6, c. 19.)

*An Act to amend the law relating to merchant shipping for the purpose of enabling effect to be given to an international agreement for establishing a system of observation of the Spanish frontiers.*

[19th March, 1937.]

WHEREAS His Majesty's Government in the United Kingdom have, by an agreement (hereafter referred to as "the observation agreement") embodied in a resolution adopted on the eighth day of March nineteen hundred and thirty-seven by the International Committee for the application of the agreement regarding non-intervention in Spain, agreed with the Governments of certain other countries to establish in the manner provided in the observation agreement, unless otherwise amended or determined, a system of observation of the Spanish frontiers for the purpose of ascertaining whether the agreement regarding non-intervention in Spain is being effectively observed :

And whereas the said system, under the terms of the observation agreement, is to be carried into effect by a body referred to therein as "the International Board for Non-intervention in Spain" and by certain officers, who are referred to in the observation agreement and in this Act as "the chief administrator", "administrators", "deputy administrators" and "observing officers" ;

And whereas, in order to enable effect to be given to the said agreement, it is expedient to make such amendments of the law relating to merchant shipping as are hereafter contained in this Act :

Now, therefore, be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Provision as  
to observing  
officers.

1. (1) No ship to which the Merchant Shipping (Carriage of Munitions to Spain) Act, 1936<sup>1</sup> (hereafter in this Act referred to as " the Act of 1936 ") applies and which is bound to a port or place in Spanish territory shall enter any waters adjacent to Spanish territory unless she has first proceeded to the prescribed place and there embarked such observing officers as may be deputed in that behalf by the administrator at that place :

<sup>1</sup> Edw. 8 &  
<sup>1</sup> Geo. 6,  
c. 1.

Provided that—

- (a) a ship shall not be deemed to have contravened the foregoing provisions of this sub-section by reason only that she has been compelled to enter waters adjacent to Spanish territory, either in order to reach the prescribed place, or by stress of weather or any other circumstance which neither the master nor the owner of the ship could have prevented or forestalled ; and
- (b) there may, by agreement between the master or owner of any ship and the chief administrator or the administrator at the prescribed place, be substituted for the prescribed place, in relation to that ship while on the voyage on which she is then engaged, such other place as may be so agreed ; and
- (c) the administrator at the prescribed place may, if it appears to him that he has for the time being an insufficient number of observing officers available for embarkation on any ship, exempt that ship from the provisions of this sub-section while on the voyage on which she is then engaged.

(2) Any observing officers so embarked on any such ship shall be entitled to remain on board the ship until disembarked in the manner provided in the next following sub-section.

(3) When any ship to which the Act of 1936<sup>1</sup> applies, having observing officers on board in pursuance of this Act, leaves a port or place in Spanish territory bound to any port or place not in Spanish territory, she shall proceed to the prescribed place, taking the shortest available route thereto unless otherwise agreed between the master or owner of the ship and the administrator who deputed the observing officers on board the ship, and shall there disembark the said officers :

Provided that the said administrator may substitute another place for the prescribed place, so, however, that, without the consent of the master or owner of the ship, no such substitution shall be made which would increase the length of the ship's intended voyage by more than fifty sea miles.

(4) If any ship to which the Act of 1936<sup>1</sup> applies contravenes or fails to comply with the foregoing provisions of this section, the master of the ship shall be guilty of a misdemeanour, and the owner of the ship shall also be guilty of a misdemeanour if he is privy to the contravention or failure.

(5) The Board of Trade may on the application of the owner and with the consent of the authority, by licence exempt any ship, being a ship which is shown to the satisfaction of the Board of Trade to be regularly engaged in carrying goods or passengers to or from Spanish territory, from the foregoing provisions of this section on the following conditions, namely :—

- (a) that the ship does not, except with the consent of the chief administrator, proceed to sea from any port or place without having on board such observing officers as may be deputed from time to time in that behalf by the chief administrator ; and
- (b) that the owner of the ship pays to the authority on demand such additional expenses as may from time to time be certified by the Board of Trade to have been incurred by the authority by reason of the ship complying with the condition aforesaid, instead of complying with the said provisions of this section.

The Board of Trade may at any time, and shall at the request of the authority or the owner of the ship, cancel any licence granted under this sub-section.

If any ship while exempt under this sub-section fails to comply with the condition specified in paragraph (a) of this sub-section, the master of the ship shall be guilty of a misdemeanour, and the owner of the ship shall also be guilty of a misdemeanour if he is privy to the failure to comply with the condition.

(6) An observing officer carried in a ship in pursuance of this Act shall, while on board the ship, be entitled to be provided with subsistence and accommodation, and to require signals to be made and to require messages to be sent by wireless telegraphy, in accordance with regulations made under this section, and also to exercise the following powers—

- (a) he may at any reasonable time require the master to produce any documents and furnish any information in his possession relating to any cargo destined for Spanish territory which is being carried in the ship ;
- (b) he may, if he has reasonable grounds for suspecting that the contents of any package carried in the ship do not correspond with the particulars shown in the documents produced to him, or if the description of the contents of any package shown in those documents, taken with any description thereof shown on the package, is insufficient to enable him to discharge his duties under the observation agreement, require the master to cause the package to be opened for his inspection immediately before it is discharged from the ship ;

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<sup>1</sup> *Supra.*



- (c) he may at any reasonable time require the master to produce the agreement with the crew and any other documents in his possession relating to a member of the crew ;
- (d) he may at any reasonable time, in the presence of the master or an officer of the ship authorised in that behalf by the master, require any passenger to produce his passport and require any passenger or member of the crew to state whether he proposes to disembark at a port or place in Spanish territory and, if so, his reason for so disembarking ;
- (e) he may be present at the unloading of any goods and the disembarkation of any persons at any port or place in Spanish territory or in the waters adjacent to Spanish territory :

and if the master of the ship or any other person on board the ship fails to do anything duly required of him by an observing officer under this sub-section, or obstructs such an officer in the exercise of his powers under this sub-section, or, being duly required by such an officer to furnish any information or make any statement, furnishes information or makes a statement which he knows to be false, he shall be liable to a fine not exceeding one hundred pounds.

(7) Every ship to which the Act of 1936<sup>1</sup> applies having observing officers on board in pursuance of this Act, or being engaged on a voyage on which she has been exempted by an administrator from the provisions of sub-section (1) of this section under the proviso thereto, shall, while in waters adjacent to Spanish territory, display the prescribed signals ; and if in those waters any such ship, having any such officers on board or being so engaged, fails to display the prescribed signals or, having no such officers on board and not being so engaged, displays the prescribed signals, the master of the ship shall be liable to a fine not exceeding one hundred pounds.

(8) The Board of Trade may make regulations—

- (a) as to the subsistence and accommodation to be provided for observing officers on ships to which the Act of 1936<sup>1</sup> applies and as to the powers of such officers to require signals to be made and to require messages to be sent by wireless telegraphy ;
- (b) as to the payments to be made by the authority to the owners of such ships in respect of the subsistence provided for observing officers and in respect of tolls, dues, rates or charges of any kind incurred by such ships by reason only of their entering or using a port solely for the purpose of embarking or disembarking such officers, and as to the payments (if any) to be so made in respect of the accommodation provided for such officers and the signals and messages required to be made and sent by them ;
- (c) prescribing the signals to be displayed for the purpose of the last foregoing sub-section ;

- (d) prescribing, according to the voyages on which they are for the time being engaged, the places to which, subject to the provisions of this section, such ships are to proceed for the purpose of embarking and disembarking observing officers in pursuance of this Act ;

and for the purpose of any provision of this section the expression "the prescribed place," in relation to a ship engaged on any voyage, means the place specified in relation to that voyage in the regulations applicable for the purpose of that provision.

(9) For the purpose of any enactment which defines a passenger steamer by reference to the number of passengers carried, an observing officer carried in any ship, whether British or foreign, in pursuance of this Act or the observation agreement shall not be deemed to be a passenger.

2. (1) An officer of a ship of war which fulfils the conditions hereafter specified in this section may exercise the following powers as respects ships to which the Act of 1936<sup>1</sup> applies while they are within waters adjacent to Spanish territory, that is to say—

Powers of  
naval officers  
of certain  
countries.

- (a) he may go on board the ship and for that purpose may require the ship to stop ;
- (b) he may require the master to produce the certificate of registry of the ship and the clearance of the ship from its last port of call ;
- (c) he may require the master to state whether any observing officers are on board the ship, and to allow him to interview any such officers stated by the master to be on board.

(2) The conditions which a ship of war must fulfil in order to entitle an officer thereof to exercise the foregoing powers shall be as follows :—

- (a) the ship must be a ship of war of one of such Powers as may be declared, by an order for the time being in force under this section, to have been entrusted under the observation agreement with observation duties in the waters adjacent to Spanish territory ;
- (b) the ship must be in such of the said waters as may be so declared to have been placed under the observation of the Power to which the ship belongs ;
- (c) the ship must be displaying such signals as may be so declared to be required by the said agreement to be displayed by ships of war engaged in the said duties.

(3) Any order under this section shall be made by the Secretary of State, and may be revoked or varied by a subsequent order made by the Secretary of State.

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<sup>1</sup> *Supra.*

(4) The powers conferred by sub-section (1) of this section, if and so far as they are conferred on officers of His Majesty's ships of war, shall be in addition to and not in derogation of any other powers conferred upon them by any enactment, and may be exercised as respects any ship of a country the Government of which is a party to the observation agreements as well as respects ships to which the Act of 1936<sup>1</sup> applies.

(5) If any ship to which the Act of 1936<sup>1</sup> applies, being duly required under this section to stop, fails to comply with that requirement, the master of the ship shall be guilty of a misdemeanour, and if the master of any such ship fails to produce any document or make any statement which he is duly required to produce or make under this section, or if any person on board any such ship obstructs any officer in the exercise of his powers under this section, he shall be liable to a fine not exceeding one hundred pounds.

Power by  
Order in  
Council  
to give  
effect to  
amendments  
of agreement  
and arrange-  
ments made  
in pursuance  
thereof.

3. (1) His Majesty may make such Orders in Council as appear to him to be necessary or expedient for the purpose of giving effect to any arrangements made in pursuance of the provisions of the observation agreement relating to merchant shipping or to any further agreement amending or supplementing those provisions, and any such Order may contain provisions for the imposition by summary process or otherwise of penalties in respect of breaches of the Order and provisions for the amendment of this Act or any other enactment relating to merchant shipping.

(2) Any Order in Council made under this section may be varied or revoked by a subsequent Order in Council.

(3) Any Order in Council made under this section for giving effect to any further agreement amending or supplementing the observation agreement shall cease to have effect at the expiration of a period of twenty-eight days from the date when the Order is made, unless before the expiration of that period each House of Parliament has by resolution approved the Order, but without prejudice to the validity of anything previously done thereunder or the making of a new Order :

Provided that in reckoning any such period of twenty-eight days no account shall be taken of any time during which Parliament is dissolved or prorogued or during which the Commons House is adjourned for more than four days.

Short title,  
construction,  
interpretation,  
extent,  
commence-  
ment and  
duration.

4. (1) This Act may be cited as the Merchant Shipping (Spanish Frontiers Observation) Act, 1937.

(2) This Act and the Merchant Shipping Acts, 1894 to 1936, shall be construed as one and may be cited together as the Merchant Shipping Acts, 1894 to 1937.

(3) For the purposes of this Act—

(a) references to the administrator at a place shall, in a case where there is no administrator at that place, be construed as references to the deputy administrator at that place ;

1 Edw. 8 & 1 Geo. 6, c. 23.] *The Merchant Shipping Act, 1937.*

- (b) the expression "the authority" means such body as may be certified by the Board of Trade to be the body entrusted by the International Board for Non-intervention in Spain with the functions of the authority under this Act or, if no such certificate is given, the said International Board ;
- (c) references to an owner of a ship shall include references to a charterer ;
- (d) the expression "Spanish territory" includes the Spanish zone of Morocco, but shall not, until such date as the Board of Trade may by order appoint, include the Canary Islands ;
- (e) the expression "waters adjacent to Spanish territory" means any part of the sea within ten sea miles from any point on the coast of any Spanish territory.

(4) This Act shall extend to all those parts of His Majesty's dominions and other countries to which the Act of 1936<sup>1</sup> extends.

(5) This Act shall come into force on such date<sup>2</sup> as the Board of Trade may by order appoint, and different dates may be appointed in relation to different ships and different provisions of this Act.

(6) This Act shall continue in force until His Majesty by Order in Council is pleased to declare that it is no longer necessary or expedient that it should continue in force :

52 & 53 Vict.,  
c. 63.

Provided that on the expiration of this Act sub-section (2) of section thirty-eight of the Interpretation Act, 1889<sup>3</sup> (which relates to the effect of repeals), shall apply as if this Act had been repealed by another Act.

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#### THE MERCHANT SHIPPING ACT, 1937.

(1 Edw. 8 & 1 Geo. 6, c. 23.)

*An Act to make further provision as to the submergence of load lines and as to the life-saving appliances of fishing boats.*

[25th March, 1937.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. (1) If the master of a ship to which this section applies takes the ship to sea when she is loaded in contravention of section forty-four of the Penalty for taking or sending

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<sup>1</sup> *Supra.*

<sup>2</sup> This Act came into force on the 19th April, 1937, see Statutory Rules and Orders, 1937, (No. 366), p. 1711.

<sup>3</sup> See Vol. II of this publication.

*The Merchant Shipping (Superannuation Contributions) Act, 1937.* [1 Geo. 6, c. 4.]

ship to sea  
with load line  
submerged.

Merchant Shipping (Safety and Load Line Conventions) Act, 1932<sup>1</sup>, or if any other person sends or is party to sending any such ship to sea loaded as aforesaid having reason to believe that she is so loaded, he shall, in addition to any penalty to which he may be liable under the said section forty-four, be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years ; or

(b) on summary conviction, to imprisonment for a term not exceeding six months.

(2) This section applies to all British load line ships registered in the United Kingdom and to all other British ships to which the said section forty-four for the time being applies by virtue of an Order in Council made under sub-section (3) of section sixty-four of the said Act.

(3) This section shall extend, subject to such modifications and adaptations (if any) as may be made by Order in Council, to all parts of His Majesty's dominions to which the said section forty-four for the time being extends by virtue of an Order in Council made under sub-section (1) of the said section sixty-four.

Short title  
and citation.

2.2\*      \*      \*      \*      \*      \*      \*

3. (1) This Act may be cited as the Merchant Shipping Act, 1937.

(2) This Act shall be construed as one with the Merchant Shipping Acts, 1894 to 1937, and shall be included among the Acts which may be cited together as the Merchant Shipping Acts, 1894 to 1937.

THE MERCHANT SHIPPING (SUPERANNUATION CONTRIBUTIONS) ACT, 1937.

(1 Geo. 6, c. 4.)

*An Act to amend section one hundred and sixty-three of the Merchant Shipping Act, 1894, as respects contributions out of wages to certain funds established for the provision of superannuation and other like benefits.*

[9th December, 1937.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. (1) The provisions of paragraphs (b) and (c) of sub-section (1) of section one hundred and sixty-three of the <sup>3</sup>Merchant Shipping Act, 1894 (which

Amendment  
of 57 & 58  
Vict., c. 60,  
s. 163.

<sup>1</sup> See Vol. III of this publication.

<sup>2</sup> S. 2 is a repealing provision and has not been reprinted.

<sup>3</sup> See Vol. II of this publication.

places restrictions upon certain dispositions by seamen and apprentices of their wages) shall not apply to any such disposition in so far as it relates to the application of wages in the payment of contributions to a fund to which this Act applies, and the provisions of paragraphs (a) and (d) of that subsection shall not apply to anything done or to be done for giving effect to such a disposition so far as aforesaid.

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2. (1) This Act may be cited as the Merchant Shipping (Superannuation Contributions) Act, 1937. Short title,  
construction  
and citation.

(2) This Act shall be construed as one with the Merchant Shipping Acts, 1894 to 1937, and shall be included among the Acts which may be cited together as the Merchant Shipping Acts, 1894 to 1937.

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## THE CINEMATOGRAPH FILMS ACT, 1938.

(1 & 2 Geo. 6, c. 17.)

### ARRANGEMENT OF SECTIONS.

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#### PART I.

#### RENTERS' QUOTAS AND EXHIBITORS' QUOTAS.

##### *Provisions relating to Renters' quotas.*

##### SECTION.

1. Determination of renters' quotas for period beginning 1st April 1938 and ending 31st March 1948.
2. Restrictions on the counting of a British film more than once, or by more than one renter, for quota purposes.
3. Special provisions with respect to British films rented in foreign countries.
4. Exemption in respect of films for which demand is limited.
5. Combinations of renters for quota purposes.
6. Provisions with respect to films acquired and registered in different periods.

##### *Provisions relating to Exhibitors' quotas.*

7. Determination of exhibitors' quotas for period beginning 1st October 1938 and ending 30th September 1948.

*General Provisions.*

## SECTION.

8. Restriction on renting registered films otherwise than at their registered lengths.
9. Licensing of renters and exhibitors.
10. Provisions for securing that films exhibited in Great Britain are obtained from licensed renters.
11. Penalties for quota offences.
12. Record books to be kept by renters and exhibitors.
13. Relief from liability for quota offences in circumstances beyond control of renter or exhibitor.
14. Provisions as to cases where distribution rights in respect of films pass on renters going out of business.
15. Power of Board of Trade to alter quotas by order.
16. Reduction of exhibitors' quotas for year ending 30th September, 1938.

## PART II.

## RESTRICTIONS ON BLIND BOOKING AND ADVANCE BOOKING OF FILMS.

17. Restriction on blind booking.
18. Restriction on advance booking.
19. Penalties.
20. Invalidation of agreements involving blind booking or advance booking.
21. Information to be furnished by renters to Board of Trade for purposes of Part II.

## PART III.

## REGISTRATION OF FILMS.

22. Prohibition of distribution or exhibition of unregistered films.
23. Registration of films.
24. Applications for registration, and information to be furnished in connection therewith.
25. Determination of films to be treated as British films for purposes of registration.
26. Conditions governing registration of British films as quota films.
27. Power to disregard items of labour costs in certain circumstances.
28. Registration of serial films.

SECTION.

29. Prohibition of registration of film exhibited or registered before commencement of Act.
30. Corrections of register.
31. Reference of disputes to High Court or Court of Session.
32. Evidence of registration.
33. Information to be given to exhibitors with respect to registration of films.

PART IV.

PROVISIONS AS TO PERSONS EMPLOYED BY MAKERS OF CINEMATOGRAPH FILMS.

34. Wages and conditions of employment of persons employed by makers of cinematograph films.

PART V.

GENERAL AND SUPPLEMENTARY PROVISIONS.

35. Films to which Act applies.
36. Power of Board of Trade to vary by order minimum figure in respect of labour costs.
37. Annual returns to be made by renters and exhibitors.
38. Penalties in connection with the furnishing of information.
39. Offences by corporations.
40. Regulations of Board of Trade.
41. The Cinematograph Films Council.
42. Institution of proceedings and service of process.
43. Exercise of powers of Board of Trade.
44. Interpretation.
45. Repeals and transitional provisions.
46. Short title, commencement and extent.

SCHEDULES :

First Schedule—

Part I.—Renters' Quotas.

Part II.—Exhibitors' Quotas.

Second Schedule—Maximum Fees.

Third Schedule—*Not reprinted.*



*An Act to make further provision for securing the renting and exhibition of a certain proportion of British cinematograph films, and for restricting blind booking and advance booking of cinematograph films; to make provision as to the wages and conditions of employment of persons employed by makers of cinematograph films; and to provide for purposes connected with the matters aforesaid.*

[30th March, 1938.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## PART I.

### RENTERS' QUOTAS AND EXHIBITORS' QUOTAS.

#### *Provisions relating to Renters' quotas.*

Determina-  
tion of  
renters'  
quotas for  
period  
beginning  
1st April  
1938 and  
ending 31st  
March 1948.

1. (1) Subject to the following provisions of this Part of this Act, where a renter has, in any renters' quota period, acquired for distribution in Great Britain films which are registered as foreign long films, or has, in any such period, so acquired films which are registered as foreign short films, then unless—

- (a) in the first case, the films which have been so acquired by him in that period and are registered as long films include films registered as British long films and also as renters' quota films, and having a total length bearing to the total length of all the films which have been so acquired by him in that period and are registered as long films (exclusive of films registered only as exhibitors' quota films) a proportion not less than the proportion prescribed in relation to long films by Part I of the First Schedule to this Act for that period or, as the case may be, for the year beginning with the first day of April in which that period falls, or
- (b) in the second case, the films which have been so acquired by him in that period and are registered as short films include films registered as British short films and also as renters' quota films, and having a total length bearing to the total length of all the films which have been so acquired by him in that period and are registered as short films (exclusive of films registered only as exhibitors' quota films) a proportion not less than the proportion prescribed in relation to short films by Part I of the said Schedule for that period or, as the case may be, for the year beginning with the first day of April in which that period falls,

the renter shall be guilty of a quota offence, except in a case where either the Board of Trade certify, under the following provisions of this Part of this

Act, that his failure to fulfil the relevant conditions imposed by this sub-section was due to circumstances beyond his control, or the renter proves that fact to the satisfaction of the court.

(2) For the purpose of the preceding sub-section, the length of a film shall be taken to be its registered length; but where a film registered as a renters' quota film is also registered as a British long film and also as doubled or trebled for the purpose of renters' quota on the ground of its cost, then, subject to the following provisions of this Part of this Act, the length of the film shall be taken for the purpose of paragraph (a) of that sub-section to be twice or, as the case may be, three times its registered length:

Provided that a renter shall be deemed not to have fulfilled the quota conditions imposed by paragraph (a) of the preceding sub-section as respects the quota period beginning with the first day of April nineteen hundred and thirty-eight or either of the two renters' quota periods falling in the year beginning with the first day of April nineteen hundred and thirty-nine or in any subsequent year, if the aggregate of the registered lengths of the films acquired by him in that period or year, as the case may be for distribution in Great Britain which are registered as British long films and also as renters' quota films bears to the aggregate of the lengths which are to be taken, for the purpose of that paragraph, to be the lengths of those films, a proportion being less than one-half.

(3) The Board of Trade, after consulting the Cinematograph Films Council and considering its advice in the matter, may, not later than the end of June in the year nineteen hundred and thirty-eight or any of the eight succeeding years, lay before Parliament the draft of an order directing—

(a) that, in relation to the renters' quota period beginning with the first day of April then next following and in relation to any subsequent renters' quota period specified in the order, this section shall have effect as if for sub-section (2) thereof there were substituted the following sub-section:

“(2) For the purpose of the preceding sub-section, the length of a film shall be taken to be its registered length; but where a film registered as a renters' quota film is also registered as a British long film and also as doubled for the purpose of renters' quota on the ground of its cost, then, subject to the following provisions of this Part of this Act, the length of the film shall be taken, for the purpose of paragraph (a) of that sub-section, to be twice its registered length”; or

(b) that, in relation to the year beginning with the said first day of April and in relation to any subsequent year specified in the order, the proviso to sub-section (2) of this section—

(i) shall have effect as if in that proviso for the reference to one-half there were substituted a reference to such other proportion as may be specified in the order, or

(ii) shall have no effect;

and if, not later than the thirty-first day of July next following the date on which the draft of any such order is laid before it, each House of Parliament resolves that the order be made, the Board shall forthwith make the order in terms of the draft.

(4) The power conferred by the last preceding sub-section to lay in draft before Parliament and to make an order shall be construed as including a power, exercisable in the like manner and subject to the like conditions, to lay in draft before Parliament and to make an order varying or revoking an order having effect by virtue of that sub-section :

Provided that an order varying or revoking such an order as aforesaid shall not have effect in relation to any period prior to the first day of April next following the date on which the order is made.

Restrictions  
on the  
counting of  
a British  
film more  
than once,  
or by more  
than one  
renter, for  
quota  
purposes.

2. (1) Subject to the following provisions of this Part of this Act, no film registered as a British film shall, for the purpose of the fulfilment of any conditions imposed by sub-section (1) of the last preceding section (hereafter in this Act referred to as "quota conditions"), be counted more than once by the same renter or counted by any renter other than the renter who has first acquired the film (whether before or after the commencement of this Act) for distribution in Great Britain ; and no film so registered shall be counted for the said purpose if it has already been counted for the purpose of complying with the requirements of section thirteen of the Act of 1927<sup>1</sup>.

(2) Where, at any time in a renters' quota period, a renter has acquired, for distribution in a limited area in Great Britain only, a film which is registered as a British film and also as a renters' quota film, and which, at that time, had not been exhibited to the public at a theatre in that area, then if throughout that period or, as the case may be, the part thereof during which he carried on business as a renter in great Britain—

- (a) that renter has had no right to distribute in Great Britain outside that area any films which are registered as foreign films or are registered as British films and also as renters' quota films, and
- (b) no other renter has had a right to distribute the first-mentioned film in that area,

the said film may, for the purpose of the fulfilment of any relevant quota conditions as respects that period, be counted once by the first-mentioned renter, notwithstanding that some other person is also entitled, by virtue of this sub-section, to count the film for the said purpose.

(3) Where the films which a renter has, in any renters' quota period, acquired for distribution in Great Britain consist of, or include, old films registered as British films and also as renters' quota films, and old films registered as foreign films, he may, for the purpose of fulfilling any relevant quota conditions as respects that period, count once each of the said old films which is registered as a British film—

- (a) if all the registered films so acquired by him in that period (exclusive of films registered only as exhibitors' quota films) are old films, or

<sup>1</sup> See Vol. III of this publication.

(b) (in a case where the said registered films include films other than old films) if any such quota conditions would have been fulfilled as respects those other films had they been the only films so acquired by him in that period.

(4) For the purposes of the last preceding sub-section, a film which in any renters' quota period a renter acquires for distribution in Great Britain shall, in relation to that period, be deemed to be old if, and only if,—

(a) the film has previously been acquired as aforesaid by some other renter, and

(b) not less than one year has elapsed since the end of the year in which the film was previously acquired as aforesaid by any other renter ;

and in this sub-section the expression " year " means year beginning with the first day of April.

3. (1) Where, by means of such evidence (including statutory declarations) as the Board of Trade may require, a renter carrying on business in Great Britain satisfies the Board with respect to any film registered under Part III of this Act as a British long film, and also as doubled or trebled for the purpose of renters' quota—

Special provisions with respect to British films rented in foreign countries.

(a) that in any renters' quota period the said renter has, for a price of not less than twenty thousand pounds, acquired the film for distribution in a foreign country, and

(b) that the said renter has not acquired the film for distribution in Great Britain,

the Board may, if they think fit, give directions that in determining whether any relevant quota conditions have been fulfilled—

(i) the film shall (except for the purpose of the proviso to sub-section (2) of section one of this Act) be treated as if at the time when the said renter acquired it for distribution in that foreign country, he had acquired it for distribution in Great Britain, and

(ii) any acquisition of the film by another renter for distribution in Great Britain (whether before or after the giving of the directions) shall be disregarded.

(2) Any directions given under this section by the Board of Trade shall—

(a) in a case where—

(i) the film to which the directions relate is registered as trebled for the purpose of renters' quota, and

(ii) the Board are satisfied that the price paid or payable by the renter in respect of his acquisition of the film for distribution in the foreign country is not less than thirty thousand pounds,

include a direction that the length of the film shall, for the purpose of determining whether any relevant quota conditions

have been fulfilled by that renter in any renters' quota period, be taken to be twice its registered length, or

- (b) in any other case, include a direction that the length of the film shall, for the said purpose, be taken to be its registered length :

Provided that, if the total length of the films which, by virtue of any directions under this section, a renter is to be deemed for any purpose to have acquired in any renters' quota period for distribution in Great Britain exceeds half the total length of films registered as British long films which, apart from those directions, he must have acquired for distribution in Great Britain in order to fulfil the relevant quota conditions as respects that period, the first-mentioned total length shall be deemed to be reduced by the amount of the excess.

(3) If, at any time after giving any directions under this section, the Board of Trade discover that they were misinformed as to any of the material facts by reference to which their decision to give the directions was made, the Board may revoke the directions ; and where any such directions are revoked, they shall be deemed never to have been given.

(4) If, and to the extent that, section one of this Act has effect subject to the modification made therein by an order containing such a direction as is authorised by paragraph (a) of sub-section (3) of that section, this section shall have effect as if, in sub-section (1) of this section, for the words " doubled or trebled for the purpose of renters' quota " there were substituted the words " doubled for the purpose of renters' quota or capable of being doubled under this section ", and as if in sub-section (2) of this section, for the words " trebled for the purpose of renters' quota " there were substituted the words " capable of being doubled under this section ".

**Exemptions  
in respect  
of films for  
which  
demand is  
limited.**

4. (1) Upon application made, with respect to a film to which this Act applies, by a renter who has, in any renters' quota period, acquired that film for distribution in Great Britain, or who proposes to acquire it in any such period for distribution in Great Britain, the Board of Trade, if satisfied that the film is a long film and that it has not been exhibited to the public in Great Britain within the twelve months immediately preceding the date on which the application was made, may, if they think fit, direct that, subject to the fulfilment of the conditions set out in the following sub-section, the fact that he has, before the end of the year beginning with the said date, acquired the film for distribution in Great Britain, shall, for the purpose of determining whether that renter has fulfilled any quota conditions, be disregarded.

(2) The conditions subject to which any directions given under this section in respect of a film shall have effect are that the film must not, in the year beginning with the date of the application upon which the directions are given—

- (a) be delivered by any other renter to exhibitors in Great Britain for public exhibition therein, or

(b) be exhibited to the public at more than twelve theatres in Great Britain or at more than six theatres in the administrative county of London, or

(c) be exhibited to the public at more than one theatre in Great Britain on the same day ;

and if the renter delivers the film, after the end of that year, to an exhibitor for exhibition to the public at a theatre in Great Britain, then, for the purpose of determining whether any quota conditions have been fulfilled by him, the film shall (without prejudice to any previous effect of the directions) be treated as if, at the time when he first so delivers it, he had acquired it for distribution in Great Britain.

5. Upon application made to them in that behalf, the Board of Trade, if they think fit, may, in relation to any renters' quota period, designate any two or more renters as an approved combination for the purpose of fulfilling the quota conditions as respects that period in relation to long films ; and if, in that period, not more than one of those renters has acquired, for distribution in Great Britain, more than three films which are registered as long films (other than films which are registered only as exhibitors' quota films), the preceding sections of this Act shall, so far as regards the fulfilment of the quota conditions as respects that period in relation to long films, apply to those renters as if they constituted together a single renter :

Combinations of renters for quota purposes.

Provided that the preceding provisions of this section shall, in relation to the renters' quota period beginning with the first day of April nineteen hundred and thirty-eight, have effect as if in those provisions for the word " three " there were substituted the word " six ".

6. Where, for the purpose of any of the preceding provisions of this Act, it is material to determine what films a renter has acquired in any renters' quota period, a film which he has, in that period, acquired for distribution in Great Britain, but which has been registered in any subsequent renters' quota period, shall be deemed to have been acquired by him as aforesaid in the renters' quota period in which the film was registered and not in the renters' quota period in which he actually so acquired it.

Provisions with respect to films acquired and registered in different periods.

#### *Provisions relating to Exhibitors' quotas.*

7. (1) Subject to the following provisions of this Part of this Act, where an exhibitor has, in any exhibitors' quota year, exhibited to the public at any theatre in Great Britain films which are registered as foreign long films, or has, in any such year, so exhibited films which are registered as Foreign short films, then, unless—

Determination of exhibitors' quotas for period beginning 1st October 1938 and ending 30th September 1948.

(a) in the first case, the proportion which the total length of films which have been exhibited by him to the public at that theatre in that year, and are registered as British long films, bears to the total length of films which have been so exhibited and are registered as long films is at least equal to the proportion prescribed in relation to long films for that year by Part II of the First Schedule to this Act, or

- (b) in the second case, the proportion which the total length of films which have been exhibited by him to the public at that theatre in that year, and are registered as British short films, bears to the total length of films which have been so exhibited and are registered as short films is at least equal to the proportion prescribed in relation to short films for that year by Part II of the said Schedule,

the exhibitor shall be guilty of a quota offence, except in a case where either the Board of Trade certify, under the following provisions of this Part of this Act, that his failure to fulfil the relevant conditions imposed by this sub-section was due to circumstances beyond his control, or the exhibitor proves that fact to the satisfaction of the court.

(2) For the purpose of the preceding sub-section, the total length of films of any class mentioned in that sub-section which, in any exhibitors' quota year, has been exhibited to the public at any particular theatre shall be computed as follows, that is to say:—

- (a) the registered length of each film of that class which, in that year, has been exhibited to the public at that theatre during the normal hours in the ordinary programme shall be multiplied by the number of times the film has in that year been so exhibited; and

- (b) the products arrived at under paragraph (a) of this sub-section shall be added together.

(3) In relation to any exhibitor who does not, in any exhibitors' quota year, exhibit registered films to the public at any one theatre in Great Britain on more than six days nor at more than one such theatre at the same time, the preceding provisions of this section shall have effect as if all the registered films which had in that year been exhibited by him to the public at theatres in Great Britain had been so exhibited at one such theatre.

(4) For the purpose of determining whether any conditions imposed by sub-section (1) of this section have been fulfilled as respects any exhibitors' quota year, a film which was first registered as a British film more than four years before the beginning of that year shall be disregarded, unless, upon an application made not later than the end of that year by a renter having a right to distribute the film in Great Britain, the Board of Trade, after consulting the Cinematograph Films Council and considering its advice in the matter, direct that the film shall be taken into account for that purpose.

#### *General Provisions.*

Restriction  
on renting  
registered  
films other-  
wise than  
at their  
registered  
lengths.

8. If, on any occasion on which, during the period beginning at the commencement of this Act and ending with the thirtieth day of September nineteen hundred and forty-eight, a registered film is delivered by a renter to an exhibitor in Great Britain for public exhibition at a theatre therein, the length of the film as so delivered on that occasion differs from the registered length of the film by more than one-tenth of that registered length, the renter

shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred pounds.

9. (1) No person shall, in the year beginning at the commencement of this Act or any of the nine succeeding years, carry on the business of distributing registered films in Great Britain, unless—

Licensing  
of renters  
and exhibi-  
tors.

- (a) there is in force a licence under this section authorising him to carry on business as a renter, or
- (b) an application for such a licence as aforesaid in respect of that year has been duly made, and the determination of the application is still pending ;

and if any person carries on business in contravention of this sub-section, he shall be liable on summary conviction to a fine not exceeding twenty pounds for every day on which he so carries on business.

(2) No exhibitor shall, in any exhibitors' quota year, exhibit a registered film to the public at a theatre in Great Britain, unless at the time of the exhibition—

- (a) there is in force a licence under this section authorising him to carry on business as an exhibitor at that theatre, or
- (b) an application for such a licence as aforesaid in respect of that year has been duly made, and the determination of the application is still pending ;

and if any exhibitor exhibits a film at any theatre in contravention of this sub-section, he shall be liable on summary conviction to a fine not exceeding ten pounds for every day on which he so exhibits the film at that theatre.

(3) A licence authorising a person to carry on business as a renter in Great Britain or, as the case may be, to carry on business as an exhibitor in Great Britain shall, upon application made in that behalf by the said person, and on payment of the prescribed fee, be granted to him by the Board of Trade, unless he is disqualified for holding the licence applied for :

Provided that the Board of Trade may refuse to grant such a licence, unless the applicant has furnished to the Board such information, verified in such manner, as they may reasonably require for the purpose of satisfying themselves that he is not so disqualified.

(4) Subject as hereinafter provided, a licence under this section authorising a person to carry on business as an exhibitor shall be limited so as to extend only to the exhibition of registered films at such one theatre in Great Britain as may be specified in the licence :

Provided that such a licence as aforesaid may be granted so as to extend to the exhibition of registered films at more than one theatre in Great Britain, subject to the limitation that the licence does not authorise the holder thereof to exhibit registered films at any one theatre on more than six days in the year in respect of which the licence is granted, or to exhibit registered films at more than one theatre at the same time.



(5) Without prejudice to the following provisions of this Part of this Act, a person shall be disqualified for holding a licence under this section unless he has a place of business in Great Britain.

(6) Where the holder of a licence under this section which is for the time being in force changes the address of his place of business in Great Britain, or ceases to have a place of business in Great Britain, he shall, as soon as practicable, notify to the Board of Trade the change of address or, as the case may be, the fact that he has ceased to have such a place of business.

(7) Subject as hereinafter provided, a licence under this section shall take effect on such day, not being earlier than the beginning of the year in respect of which it is granted, as may be specified in the licence, and shall continue in force until the end of that year and no longer :

Provided that if, after the granting of such a licence, the holder of the licence becomes disqualified for holding it, the licence shall forthwith cease to have effect.

Provisions  
for securing  
that films  
exhibited  
in Great  
Britain are  
obtained  
from  
licensed  
renters.

**10.** (1) An exhibitor shall not, in the period beginning at the commencement of this Act and ending with the thirty-first day of March nineteen hundred and forty-eight, exhibit on any occasion to the public at a theatre in Great Britain any film to which this Act applies, unless—

- (a) he has acquired the right to exhibit the film to the public at that theatre on that occasion from a person who, at the time of the acquisition, was lawfully carrying on business as a renter in Great Britain, or
- (b) the exhibitor is himself lawfully carrying on business as aforesaid, and has acquired the film for distribution in Great Britain.

(2) If any person exhibits a film in contravention of this section, he shall be liable on summary conviction to a fine not exceeding twenty pounds for every day on which he so exhibits the film.

Penalties  
for quota  
offences.

**11.** (1) Any person guilty of a quota offence under this Part of this Act shall be liable, on summary conviction, to a fine not exceeding two hundred and fifty pounds or, on conviction on indictment, to a fine not exceeding five hundred pounds.

(2) Where a person is convicted, on indictment, of a quota offence under this Part of this Act, then, in addition to imposing such a fine as aforesaid, the court—

- (a) if the offence is an offence under the provisions of this Part of this Act relating to renters' quotas, and the offender has previously been convicted of a renter's offence not less than twice (whether summarily or on indictment), may revoke any renter's licence held by him, and may order, with respect to the offender or any of the following persons, that is to say,—

- (i) any person who, at or since the time when the offence occurred, was or has been financially associated with the offender in his business as a renter,

(ii) any person concerned in the management of the offender's said business who was knowingly a party to the offence, and

(iii) any person who has acquired the offender's said business either wholly or in part,

that he shall, for such period as may be specified in the order, be disqualified for holding a renter's licence, and

(b) if the offence is an offence under the provisions of this Part of this Act relating to exhibitors' quotas, and the offender has previously been convicted of an exhibitor's offence not less than twice (whether summarily or on indictment), may revoke any exhibitor's licence held by him in respect of the theatre in relation to which the offence has occurred, and may order, with respect to—

(i) the offender,

(ii) any person who, at or since the time when the offence occurred, was or has been financially associated with the offender in his business as an exhibitor, or

(iii) any person concerned in the management of the offender's said business who was knowingly a party to the offence, that he shall, for such period as may be specified in the order, be disqualified for holding an exhibitor's licence in respect of that theatre, and may also order that every person in whose case an exhibitor's licence, or a licence granted under the Act of 1927<sup>1</sup> for the purposes of section twenty of that Act, has been revoked during the year immediately preceding the date of the conviction, shall, for such period as may be specified in the order, be so disqualified :

Provided that an order under paragraph (a) of this sub-section shall not operate so as to prevent the offender performing, for a period not exceeding six months, any obligations under any contract entered into by him before the institution of the proceedings leading to the conviction.

(3) Notwithstanding anything in the Summary Jurisdiction Acts, summary proceedings for a quota offence under this Part of this Act may, in the case of an offence under the provisions of this Part of this Act relating to renters' quotas, be instituted at any time within two years after the end of the renter's quota period in relation to which the offence has occurred, or, in the case of an offence under the provisions of this Part of this Act relating to exhibitors' quotas, be instituted at any time within one year after the end of the exhibitors' quota year in relation to which the offence has occurred.

(4) In this section the expression " renter's offence " means a quota offence under the provisions of this Part of this Act relating to renters' quotas, or an offence under section thirteen of the Act of 1927<sup>1</sup>, and the expression " exhibitor's offence " means a quota offence under the provisions of this Part of this Act relating to exhibitors' quotas, or an offence under section nineteen of the Act of 1927<sup>1</sup>.

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<sup>1</sup> See Vol. III of this publication.

Record  
books to be  
kept by  
renters and  
exhibitors.

12. (1) Any renter who has, in the period beginning at the commencement of this Act and ending with the thirty-first day of March nineteen hundred and forty-eight, acquired for distribution in Great Britain, a film which is a registered film shall, as soon as practicable, record in a book to be kept by him for the purpose—

- (a) the title and registered length of the film, the fact that it is registered as a British film or registered as a foreign film, as the case may be, and such other particulars with respect to the film as may be prescribed for the purpose of identification, and
- (b) the theatres in Great Britain for public exhibition at which he delivers the film to exhibitors, and the respective dates on which, or periods for which, the film is to be, or has been, exhibited to the public at those theatres on delivery as aforesaid ;

and shall, whenever requested so to do by a person authorised in that behalf by the Board of Trade, produce the said book for inspection by that person.

(2) Any exhibitor who, in any exhibitors' quota year, exhibits a registered film to the public at a theatre in Great Britain shall, as soon as practicable, record in a book to be kept by him for the purpose in respect of that theatre—

- (a) the title and registered length of the film, the fact that it is registered as a British film or registered as a foreign film, as the case may be, and such other particulars with respect to the film as may be prescribed for the purpose of identification, and
- (b) the dates in that year on which the film was exhibited to the public at that theatre, and, in relation to each of those dates, the number of times the film was so exhibited and the respective hours at which the exhibition of cinematograph films to the public at that theatre began and ended :

Provided that an exhibitor who does not, in any exhibitors' quota year, exhibit registered films to the public at any one theatre in Great Britain on more than six days nor at more than one such theatre at the same time, shall not be obliged to keep under this sub-section more than one book in respect of the theatres at which he so exhibits registered films in that year.

(3) Any book which an exhibitor is required by this section to keep in relation to a particular theatre shall, so long as he continues to carry on the business of exhibiting registered films to the public at that theatre, be kept by him at that theatre and be open to inspection thereat, at all reasonable times, by any person authorised in that behalf by the Board of Trade ; and, subject to the preceding provisions of this sub-section, an exhibitor who is required to keep a book under this section shall, whenever requested so to do by a person authorised in that behalf by the Board, produce the book for inspection by that person.

(4) If any person who is required to keep a book under this section fails to keep the book in accordance with the requirements of this section or to

record any particular therein in accordance with those requirements, or fails to produce the book on demand for inspection by any person entitled to inspect it, or prevents or attempts to prevent the inspection of the book by any person so entitled, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding twenty pounds.

**13.** (1) If, upon application made to them, the Board of Trade are satisfied that any failure on the part of a person to fulfil any relevant quota conditions was due to circumstances beyond his control, the Board may issue a certificate to that effect :

Relief from liability for quota offences in circumstances beyond control of renter or exhibitor.

Provided that, where any application is made under this sub-section to the Board, they shall, before determining the application, consult the Cinematograph Films Council and consider its advice in the matter.

(2) For the purposes of this Part of this Act, a failure on the part of a person to fulfil any relevant quota conditions shall be deemed to have been due to circumstances beyond the control of that person if, owing to the character of the films available or to the excessive cost of such films, it was not commercially practicable to fulfil those conditions, but, in the case of a renter, shall be deemed not to have been due to circumstances beyond his control if it was commercially practicable for him to fulfil those conditions by making, or arranging for the making of, the necessary films.

**14.** (1) Where, in any renters' quota period, a person being the holder of a renter's licence for the time being in force has ceased to carry on business as a renter in Great Britain, and, in consequence of the cessation, the right to distribute in any country or area a film, to which this Act applies, and which that renter had acquired in that period for distribution in that country or area, passes in that period, by assignment or will or by operation of law, from the said person to some other person being the holder of such a licence, then, subject to the provisions of the following sub-section, the first-mentioned person shall, for the purposes of the provisions of this Part of this Act relating to renters' quotas, be deemed never to have acquired the film for distribution in that country or area, or delivered the film to an exhibitor for public exhibition.

Provisions as to cases where distribution rights in respect of films pass on renters going out of business.

(2) If, in relation to any such assignment as is mentioned in the preceding sub-section, it appears to the Board of Trade that the assignment was made with a view to the evasion of any of the provisions of this Part of this Act relating to renters' quotas, the Board may direct that the said sub-section shall not apply in relation to that assignment.

**15.** (1) Subject to the following provisions of this section, the Board of Trade, after consulting the Cinematograph Films Council and considering its advice in the matter, may, not later than the end of June nineteen hundred and thirty-nine, lay before Parliament the draft of an order altering either or both of the proportions prescribed by Part II of the First Schedule to this Act for the year beginning with the first day of October nineteen hundred and thirty-nine; and if, before the end of July nineteen hundred and thirty-nine, each House of Parliament has resolved that the order be made, the

Power of Board of Trade to alter quotas by order.

Board shall forthwith make the order in terms of the draft, and the order shall come into operation upon the making thereof.

(2) Subject to the provisions of the next following sub-section, the Board of Trade, after consulting the Cinematograph Films Council and considering its advice in the matter,—

- (a) may, at any time during the year nineteen hundred and thirty-nine, lay before Parliament the draft of an order altering, either generally or in relation only to long films or short films, all or any of the proportions prescribed by Part I of the First Schedule to this Act for the year beginning with the first day of April nineteen hundred and forty and the next succeeding year, or prescribed by Part II of the said Schedule for the year beginning with the first day of October nineteen hundred and forty and the next succeeding year, and
- (b) may, at any time during the year nineteen hundred and forty-one, lay before Parliament the draft of an order altering as aforesaid all or any of the proportions prescribed by Part I of the said Schedule for the year beginning with the first day of April nineteen hundred and forty-two and the next two succeeding years, or prescribed by Part II of the said Schedule for the year beginning with the first day of October nineteen hundred and forty-two and the next two succeeding years, and
- (c) may, at any time during the year nineteen hundred and forty-four, lay before Parliament the draft of an order altering as aforesaid all or any of the proportions prescribed by Part I of the said Schedule for the year beginning with the first day of April nineteen hundred and forty-five and the two succeeding years, or prescribed by Part II of the said Schedule for the year beginning with the first day of October nineteen hundred and forty-five and the two succeeding years ;

and if, before the end of the calendar year in which the draft of such an order is laid before Parliament, each House of Parliament has resolved that the order be made, the Board shall forthwith make the order in terms of the draft, and the order shall come into operation upon the making thereof.

(3) This section shall not authorise the making of an order—

- (a) altering any of the proportions prescribed by Part I of the First Schedule to this Act to a proportion being, in relation to long films, less than twenty per cent. or more than thirty per cent. or, in relation to short films, less than fifteen per cent. or more than thirty per cent., or
- (b) altering any of the proportions prescribed by Part II of the said Schedule to a proportion being, in relation to long films, less than fifteen per cent. or more than thirty per cent. or, in rela-

tion to short films, less than twelve-and-a-half per cent. or more than thirty per cent.

(4) As from the coming into operation of an order under this section altering any of the proportions prescribed by the First Schedule to this Act, that Schedule shall have effect as if it prescribed, instead of that proportion, the proportion substituted therefor by the order.

(5) In this section the expression "calendar year" means year beginning with the first day of January.

16. The First Schedule to the Act of 1927<sup>1</sup> shall have effect, and be deemed always to have had effect, as if the proportion prescribed by Part II of that Schedule as respects the year ending with the thirtieth day of September nineteen hundred and thirty-eight were fifteen per cent. and not twenty per cent.

Reduction of exhibitors' quotas for year ending 30th September, 1938.

## PART II.

### RESTRICTIONS ON BLIND BOOKING AND ADVANCE BOOKING OF FILMS.

17. (1) No renter shall, in the period beginning at the commencement of this Act and ending with the thirtieth day of September nineteen hundred and forty-eight, procure the giving by an exhibitor (whether for a consideration or not, and whether orally or in writing) of any such undertaking as would, if it were legally binding on the exhibitor, impose on him an obligation, either actual or contingent, to take delivery of a film to which this Act applies, for public exhibition at a theatre in Great Britain, being a film which had not been trade-shown at the time of his giving the undertaking :

Restriction on blind booking.

Provided that this sub-section shall not operate so as to restrict—

- (a) in relation to any serial film or series of films, the making, at a time when at least three parts of the film or series have been trade-shown, of an agreement for the public exhibition of any part thereof,
- (b) the making, in relation to any one film, of an agreement for the exhibition of that film at one theatre only and on a number of consecutive days, or
- (c) the making, in relation to any one film, of agreements for the exhibition of that film on not more than three days and at not more than three theatres.

(2) Where, in relation to any one film, there have been made, at a time when that film has not been trade-shown, several agreements the purport of which taken together is to provide for the public exhibition of that film in Great Britain either at more than one theatre or otherwise than on consecutive days, the benefit of paragraph (b) of the proviso to the preceding sub-section shall not extend to any of those agreements ; and where, in relation to any one film, there have been made, at a time when that film has not

<sup>1</sup> See Vol. III of this publication.

been trade-shown, several agreements the purport of which taken together is to provide for the public exhibition of the film in Great Britain either on more than three days or at more than three theatres, the benefit of paragraph (c) of the said proviso shall not extend to any of those agreements.

In relation to any film being a part of a serial film or series of films, the preceding provisions of this sub-section shall have effect as if, in those provisions, for the words "when that film has not been trade-shown," in each place where those words occur, there were substituted the words "before three parts of that serial film or series of films have been trade-shown."

Restriction  
on advance  
booking.

**18.** No renter shall, in the period beginning at the commencement of this Act and ending with the thirty first day of March nineteen hundred and forty-eight, procure the giving by an exhibitor (whether for a consideration or not, and whether orally or in writing) of any such undertaking as would, if it were legally binding on the exhibitor, impose on him an obligation, either actual or contingent, to take delivery of a film to which this Act applies for public exhibition at a theatre in Great Britain at a date later than six months after the date on which he gives the undertaking :

Provided that, in relation to any serial film or series of films, this section shall not operate so as to restrict the making of an agreement in so far as it provides for any part of the film or series being exhibited after three parts thereof have been exhibited to the public at a theatre in Great Britain.

Penalties.

**19.** If any renter contravenes any of the provisions of this Part of this Act, he shall be liable on summary conviction to a fine not exceeding two hundred and fifty pounds.

Invalidation  
of agreements  
involving  
blind booking  
or advance  
booking.

**20.** (1) Any agreement made after the commencement of this Act (whether in Great Britain or elsewhere) shall be invalid, if and so far as—

(a) in the case of an agreement made before the end of September nineteen hundred and forty-eight, it purports to impose on any exhibitor an obligation, either actual or contingent, to take delivery of a film to which this Act applies for public exhibition at a theatre in Great Britain, being a film which has not been trade-shown at the time of the making of the agreement, or

(b) in the case of an agreement made before the end of March nineteen hundred and forty-eight, it purports to impose on any exhibitor an obligation, either actual or contingent, to take delivery of a film to which this Act applies for public exhibition at a theatre in Great Britain at a date later than six months after the date on which the agreement is made :

Provided that the preceding provisions of this sub-section shall not apply in relation to any agreement the making of which is unrestricted by virtue of the proviso to sub-section (1) of section seventeen of this Act or the proviso to section eighteen of this Act, as the case may be.

(2) Any agreement validly made before the commencement of this Act (whether in Great Britain or elsewhere) which, if made after the commencement of this Act, would be invalid under the preceding sub-section, shall, if and so far as it relates to the delivery after the end of September nineteen hundred and thirty-eight, for public exhibition in Great Britain, of a film to which this Act applies, cease to have effect at the end of that month.

21. A renter shall, whenever requested so to do by a person authorised in that behalf by the Board of Trade, produce to that person such books or other documents, and furnish to that person such other information, with respect to any film delivered or to be delivered by him to any exhibitor in Great Britain for public exhibition therein, being a film to which this Act applies, as the Board may require for the purpose of the enforcement of this Part of this Act.

Information to be furnished by renters to Board of Trade for purposes of Part II.

### PART III.

#### REGISTRATION OF FILMS.

22. (1) No person shall, in the period beginning at the commencement of this Act and ending with the thirtieth day of September nineteen hundred and forty-eight, deliver to an exhibitor in Great Britain for public exhibition therein any film to which this Act applies, unless, at the time of the delivery, the film is a registered film and no person shall, in the said period, exhibit to the public at a theatre in Great Britain any film to which this Act applies, being a film which he knows, or ought to have known, not to be a registered film :

Prohibition of distribution or exhibition of unregistered films.

Provided that this sub-section shall not restrict the delivery or exhibition, in pursuance of a valid agreement for its exhibition at one theatre only on a number of consecutive days, of a film in respect of which a provisional application for registration has been made, if the film is trade-shown within six weeks from the date on which the application was made, and shall not restrict—

- (a) the delivery or exhibition of any film which has been exhibited in Great Britain to exhibitors or to the public before the commencement of this Act, other than a film which was first so exhibited after the end of September nineteen hundred and twenty-seven and is a film to which the Act of 1927<sup>1</sup> applies, or
- (b) the delivery or exhibition, in pursuance of valid agreements for its exhibition on not more than three days and at not more than three theatres, of a film which, at the time of the delivery or exhibition, has not been trade-shown.

(2) If any person delivers a film in contravention of this section, he shall be liable on summary conviction to a fine not exceeding two hundred and fifty pounds ; and if any person exhibits a film in contravention of this section, he shall be liable on summary conviction to a fine not exceeding twenty pounds for every day on which he so exhibits the film.

<sup>1</sup> See Vol. III of this publication.



Registration  
of films.

**23.** (1) Upon application duly made to them, not later than the end of September nineteen hundred and forty-eight, for the registration of a film to which this Act applies, the Board of Trade shall, subject to the following provisions of this Part of this Act, register the film under this Part of this Act in a register to be kept by the Board for the purpose.

(2) The register shall be so kept as to record, in relation to each film registered therein,—

(a) the title and length of the film, the fact that it is a British film or a foreign film, as the case may be, and such other particulars (if any) with respect to the film as may be prescribed for the purpose of identification, and

(b) such other particulars with respect to the film as are required by the following provisions of this part of this Act to be entered in the register.

(3) On the registration of a film under this Part of this Act, the Board of Trade shall issue to the person on whose application the film is registered a certificate of registration specifying all the particulars which, at the time of the issue of the certificate, are recorded in the register with respect to that film.

(4) As soon as may be after the end of the week beginning at the commencement of this Act, and of each subsequent week, the Board of Trade shall publish in the Board of Trade Journal a list of films registered in that week.

(5) The register shall, at all reasonable times, be open to inspection by any person at the offices of the Board of Trade, on payment of the prescribed fee, and any person inspecting the register may take copies of any entries therein.

(6) The Board of Trade shall, on demand made in that behalf by any person and on payment of the prescribed fee, furnish that person with a copy of the entry in the register relating to any particular film, being a copy certified to be true by the officer of the Board of Trade having the custody of the register.

Applications  
for registra-  
tion, and  
information  
to be  
furnished  
in connection  
therewith.

**24.** (1) Every application for the registration of a film shall be made either by the maker of the film or by a renter who has acquired it for distribution in Great Britain, and shall be accompanied by the prescribed fee.

(2) No such application as aforesaid shall be entertained unless the film which is the subject of the application has been trade-shown within the fourteen days immediately preceding the date on which the application is made :

Provided that—

(a) a provisional application may be made before the film has been trade-shown, and in that case, if the film is trade-shown within six weeks after the date on which the provisional application is made, the provisional application shall thereupon be treated

as if it had been made within fourteen days after the film was trade-shown; and

- (b) an application made more than fourteen days after the film was trade-shown may be entertained by the Board of Trade if they are satisfied that the delay was due to special circumstances and was not intentional.

(3) The applicant for the registration of a film, and if the applicant is not the maker of the film, the maker, shall produce to the Board of Trade such books and other documents relating to the film, and furnish to the Board such other information with respect thereto, as the Board may require for the proper discharge of their functions under this Part of this Act in relation to that film; and any information furnished for the purposes of this sub-section shall, if the Board so direct, be accompanied by a statutory declaration as to the truth of the information, being a declaration made by the person furnishing the information:

Provided that an application for the registration of a film shall not be granted, unless and until there has been furnished to the Board of Trade a statutory declaration made by the applicant to the effect that there has not been made, in relation to that film, any such agreement as is declared by Part II of this Act to be invalid in any respect.

25. (1) Subject to the following provisions of this section, a film shall, for the purpose of the registration thereof under this Part of this Act, be deemed to be a British film, if, and only if,—

- (a) the maker of the film was, throughout the time during which the film was being made, either a British subject or a British company, and
- (b) the studio, if any, used in making the film was within His Majesty's dominions, and
- (c) not less than the requisite amount of labour costs represents payments paid or payable in respect of the labour or services of British subjects or persons domiciled in some part of His Majesty's dominions.

(2) In paragraph (a) of the preceding sub-section the expression "a British company" means a company incorporated under the laws of any part of His Majesty's dominions, being a company the directors of which, or the majority of the directors of which, were British subjects; and for the purposes of paragraphs (a) and (c) of that sub-section, any film used for making photographs depicted as part of any scene in the film which is the subject of the application for registration, shall be deemed to form part of the last-mentioned film; and in paragraph (c) of that sub-section the expression "the requisite amount of labour costs" means, in relation to any film—

- (a) (in a case where the total labour costs of the film amount to not less than twenty-two thousand five hundred pounds, and the quotient derived from dividing the amount of the said total

*Determination of films to be treated as British films for purposes of registration.*

labour costs by the number of feet comprised in the length of the film is a sum of not less than three pounds) whichever of the two following amounts is the less, that is to say—

(i) the amount arrived at by applying the fraction three-quarters to the total labour costs of the film, after deducting therefrom, if the applicant for registration so desires, the amount of any payment which, as part of those costs, has been paid or is payable in respect of the labour or services of any one person who was, while engaged in the making of the film, neither a British subject nor a person domiciled in some part of His Majesty's dominions ;

(ii) the amount arrived at by applying the fraction four-fifths to the total labour costs of the film, after deducting therefrom the amount of any payments which, as part of those costs, have been paid or are payable in respect of the labour or services of any two persons neither of whom was, while engaged in the making of the film, a British subject or a person so domiciled, and at least one of whom was so engaged in the capacity of an actor or actress, or

(b) in any other case, the amount arrived at under sub-paragraph (i) of the preceding paragraph :

Provided that if, upon the application for the registration, as a British film, of a film in respect of which the condition imposed by paragraph (c) of the preceding sub-section is not fulfilled, the Board of Trade are satisfied that the maker of the film took all reasonable steps to fulfil the said condition, and that the non-fulfilment thereof was due to exceptional circumstances beyond his control, the Board, if they think fit, may direct that this sub-section shall have effect in relation to that film as if in paragraph (a) of this sub-section for the words "three-quarters" and the words "four-fifths" there were respectively substituted the words "seven-tenths" and the words "three-quarters".

(3) If, upon an application for the registration of a film as a British film, the applicant requests the Board of Trade so to do, the Board shall, for the purpose of determining whether the conditions imposed by this section are fulfilled in respect of the film, treat the film as if such portions thereof as may be designated by the applicant, being portions the length of which does not exceed in all ten per cent. of the total length of the film or twenty per cent. of so much of its total length as consists of photographs of studio scenes (whichever percentage is the less), did not form part of the film ; and in that case the length of the film shall, for the purpose of the registration thereof, be deemed to be reduced by the length of the portions of the film which, by virtue of this sub-section, are to be treated as not forming part of the film.

(4) Every film registered under this Part of this Act shall, if the conditions imposed by sub-section (1) of this section are fulfilled in respect of the

film, be registered as a British film, or, if those conditions are not so fulfilled, be registered as a foreign film.

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26. (1) Every film registered under this Part of this Act as a British film shall be registered as an exhibitors' quota film, and, subject to the following provisions of this section, shall, if the applicant so requests, be registered also as a renters' quota film.

Conditions governing registration of British films as quota films.

(2) A film registered under this Part of this Act as a British film shall not be registered as a renters' quota film unless—

- (a) the maker of the film was, throughout the time during which the film was being made, a person carrying on business in the United Kingdom and having his principal place of business therein, and
- (b) the studio, if any, used in making the film (exclusive of any portion of the film which, by virtue of sub-section (3) of the last preceding section, is to be treated as not forming part of the film) was within the United Kingdom, and
- (c) at least half the requisite amount of labour costs, as defined by sub-section (2) of the last preceding section, represents payments which, as part of the labour costs of the film, have been paid or are payable in respect of the labour or services of British subjects ordinarily resident in, or persons domiciled in, the United Kingdom.

(3) A film registered under this Part of this Act as a British long film shall not be registered as a renters' quota film unless—

- (a) the total labour costs of the film amount to not less than seven thousand five hundred pounds and
- (b) the quotient derived from dividing the amount of the said total labour costs by the number of feet comprised in the length of the film is a sum of not less than one pound ;

Provided that the Board of Trade may exempt any particular film from the operation of this sub-section if, after consulting the Cinematograph Films Council and considering its advice in the matter, the Board are of opinion that the film has special value for purposes of entertainment.

(4) The Board of Trade, after consulting the Cinematograph Films Council and considering its advice in the matter, may lay before Parliament the draft of an order directing that the last preceding sub-section shall, subject to such modifications of that sub-section as may be specified in the order, apply in relation to films registered under this Part of this Act as British short films, as it applies in relation to films registered as British long films ; and if each

<sup>1</sup> Sub-section (5) was repealed by s. 6 and Sch. II of the Finance Act, 1938 (1 & 2 Geo. 6, c. 46).

House of Parliament resolves that the order be made, the Board shall make the order in terms of the draft, and the order shall come into operation on such date as may be specified therein.

(5) The Board of Trade, after consulting the Cinematograph Films Council and considering its advice in the matter, may lay before Parliament the draft of an order providing that the Board, upon representations made to them within the prescribed period after there has been trade-shown a film which is the subject of an application for the registration thereof as a British film and also as a renters' quota film, or which has been registered as aforesaid, may, notwithstanding that the conditions as to cost imposed in relation to the film by sub-section (3) of this section, or by an order under the last preceding sub-section are fulfilled, either refuse to register the film as a renters' quota film or, as the case may be, cancel the registration of the film as a renters' quota film, if, after consulting the Cinematograph Films Council and considering its advice in the matter, the Board are satisfied that the film has insufficient value for purposes of entertainment; and if each House of Parliament resolves that the order be made, the Board shall make the order in terms of the draft, and the order shall come into operation on such date, falling not earlier than twelve months after the date on which the order is made, as may be specified in the order :

Provided that an order under this sub-section shall not apply in relation to short films unless and until an order under the last preceding sub-section is in operation.

(6) Where, in the case of a film registered under this Part of this Act as a British long film and also as a renters' quota film,—

- (a) the total labour costs of the film amount to not less than twenty-two thousand five hundred pounds but to less than thirty-seven thousand five hundred pounds, and
- (b) the quotient derived from dividing the amount of the said total labour costs by the number of feet comprised in the length of the film is a sum of not less than three pounds but of less than five pounds,

the film shall be registered as doubled for the purpose of renters' quota; and where, in the case of a film registered as a British long film and also as a renters' quota film,—

- (i) the total labour costs of the film amount to not less than thirty-seven thousand five hundred pounds, and
- (ii) the quotient derived from dividing the amount of the said total labour costs by the number of feet comprised in the length of the film is a sum of not less than five pounds,

the film shall be registered as trebled for the purpose of renters' quota.

(7) If, and to the extent that, section one of this Act has effect subject to the modification made therein by an order containing such a direction as

is authorised by paragraph (a) of sub-section (3) of that section, sub-section (6) of this section shall have effect as if, in that sub-section for the words "trebled for the purpose of renters' quota" there were substituted the words "capable of being doubled under section three of this Act".

27. If, upon any application for the registration of a film under this Part of this Act, being an application in connection with which it is material to ascertain—

Power to disregard items of labour costs in certain circumstances.

(a) the labour costs of the film, or

(b) the proportion of those costs which represents payments in respect of the labour or services of persons of any particular class,

it appears to the Board of Trade that any sum which, as part of those costs, is paid or payable in respect of the labour or services of any particular person is so great as not to be a *bonâ fide* payment by way of remuneration for the labour or services in question, the Board may direct that the said sum shall, as to the whole or any part of the amount thereof, be disregarded in ascertaining the said labour costs or the said proportion thereof, as the case may be.

28. (1) Subject to the provisions of the following sub-section, an application for the registration of any part of a serial film or series of films may be entertained if three parts of the film or series have been trade-shown.

Registration of serial films.

(2) The Board of Trade, after consulting the Cinematograph Films Council and considering its advice in the matter, may by order direct that the preceding sub-section shall not apply in relation to any such application for registration as aforesaid which may be made during the continuance in force of the order; and any order under this sub-section may be revoked by a subsequent order of the Board.

(3) If an order is made under the last preceding sub-section, any provision contained in Part II of this Act which qualifies, in relation to any serial film or series of films, a restriction imposed by that Part of this Act shall operate so as to qualify that restriction in relation only to the exhibition of such parts (if any) of a serial film or series of films as are not the subject of applications for registration made during the continuance in force of the order.

29. A film which has been exhibited in Great Britain to the public before the commencement of this Act (other than a film which was first so exhibited after the end of September nineteen hundred and twenty-seven and is a film to which the Act of 1927<sup>1</sup> applies) shall not be registered after the commencement of this Act, and a film which has been duly registered under Part II of the Act of 1927<sup>1</sup> shall not be registered under this Part of this Act:

Prohibition of registration of film exhibited or registered before commencement of Act.

Provided that for the purposes of this section a film shall not be taken to have been exhibited to the public by reason only that the film has been trade-shown.

30. If, at any time after the registration of a film, the Board of Trade, upon making any such inquiries as they think desirable, are satisfied that the film either ought not to have been registered or is incorrectly registered in

Corrections of register.

<sup>1</sup> See Vol. III of this publication.

any particular, they shall cause the necessary deletion or correction to be made in the register and, if the Board think proper, issue to the maker of the film, or, if the film has been acquired by a renter for distribution in Great Britain, issue to the renter, a certificate of registration to take the place of any such certificate previously issued in respect of the film; but the Board, if in any particular case they think fit so to do, may direct that, for the purpose of any of the provisions of Part I of this Act relating to renters' quotas and exhibitors' quotas, the film shall, to such extent as may be specified in the direction, be treated as if the deletion or correction in the register had not been made.

Reference  
of disputes  
to High  
Court or  
Court of  
Session.

**31.** (1) Any person who is aggrieved by any decision taken by the Board of Trade for the purpose of the performance of their duties in relation to the register, may, subject to rules of court, make application in the matter to the High Court, and the decision of that court on any such application shall be final and not subject to appeal to any other court.

(2) In relation to any person whose principal place of business is in Scotland, the preceding sub-section shall have effect as if for any reference therein to the High Court there were substituted a reference to the Court of Session.

Evidence of  
registration.

**32.** The registration of a film may be proved by the production of—

- (a) a copy of the Board of Trade Journal containing a notification of the registration of the film, or
- (b) the certificate of registration issued, or, as the case may be, last issued in respect of the film, or
- (c) a copy of the entry in the register relating to the film, being a copy certified to be true by the officer having the custody of the register;

and a document purporting to be such a certificate of registration, or to be such a certified copy as aforesaid, shall be evidence of the matters stated in the document, without proof of the signature or authority of the person signing it.

Information  
to be given  
to exhibitors  
with respect  
to registra-  
tion of films.

**33.** (1) A renter who, in the period beginning at the commencement of this Act and ending with the thirtieth day of September nineteen hundred and forty-eight, delivers a registered film to an exhibitor in Great Britain for public exhibition therein shall, in such manner, and at such time, as may be prescribed, notify to the exhibitor the title and registered length of the film, the fact that it is registered as a British film or registered as a foreign film, as the case may be, and any such other particulars for the time being recorded in the register with respect to the film as may be prescribed.

(2) If any renter fails to comply with the provisions of this section, he shall be liable on summary conviction to a fine not exceeding twenty pounds.

## PART IV.

## PROVISIONS AS TO PERSONS EMPLOYED BY MAKERS OF CINEMATOGRAPH FILMS.

34. (1) The wages paid by any person carrying on in Great Britain the business of making films to which this Act applies to persons employed by him in connection with that business, and the conditions of employment of persons so employed, shall, unless agreed upon by the employer and by organisations representative of the persons employed, be not less favourable to the person employed than the wages which would be payable, and the conditions which would have to be observed, under a contract which complied with the requirements of any resolution of the House of Commons for the time being in force applicable to contracts of Government departments; and if any dispute arises as to what wages ought to be paid, or what conditions ought to be observed, in accordance with this section, it shall, if not otherwise disposed of, be referred by the Board of Trade to the industrial court for settlement.

Wages and conditions of employment of persons employed by makers of cinematograph films.

(2) Where any matter is referred to the industrial court under this section, the court, in arriving at its decision, shall have regard to any determination that may be brought to its notice relating to the wages or conditions of service of persons employed in a capacity similar to that of the persons to whom the reference relates, being a determination contained in a decision of a joint industrial council, conciliation board or other similar body, or in an agreement between organisations representative of employers and workpeople.

(3) Where any award has been made by the industrial court upon a dispute referred to that court under this section, then, as from the date of the award or from such later date as the court may direct, it shall be an implied term of the contract between the employer and workers to whom the award applies that the rate of wages to be paid, or the conditions of employment to be observed, under the contract shall, until varied in accordance with the provisions of this section, be in accordance with the award.

## PART V.

## GENERAL AND SUPPLEMENTARY PROVISIONS.

35. The films to which this Act applies are all cinematograph films other than—

Films to which Act applies.

- (a) films consisting wholly or mainly of photographs which, at the time when they were taken, were means of communicating news, or
- (b) films made wholly or mainly for the purpose of commercial advertisement, or
- (c) films certified by the Board of Education under sub-section (2) of section seven of the Finance Act, 1935, as being entitled to



exemption from customs duties under the convention for facilitating the international circulation of films of an educational character which is referred to in that sub-section.

Power of Board of Trade to vary by order minimum figure in respect of labour costs.

**36.** (1) The Board of Trade, after consulting the Cinematograph Films Council and considering its advice in the matter, may lay before Parliament the draft of an order directing that any provisions of this Act or of an order under Part III of this Act which specify a sum to which—

(a) the labour costs of a film, or the quotient arrived at by dividing the amount of the labour costs of the film by the length thereof, or

(b) the price paid or payable for the acquisition of the right to distribute a film in a foreign country,

must amount for any particular purpose, shall have effect as if for any reference in those provisions to the said sum there were substituted a reference to such other sum as may be specified in the order; and if each House of Parliament resolves that the order be made, the Board shall make the order in terms of the draft, and the order shall come into operation on such date as may be specified therein.

(2) The power conferred by the preceding sub-section to lay in draft before Parliament and to make an order shall be construed as including a power, exercisable in the like manner and subject to the like condition, to lay in draft before Parliament and to make an order varying or revoking an order having effect by virtue of that sub-section.

Annual returns to be made by renters and exhibitors.

**37.** (1) Every person who has, in the year beginning at the commencement of this Act or any of the nine succeeding years, carried on business as a renter in Great Britain shall—

(a) within one month after the end of that year, or within such longer period as the Board of Trade may in any particular case allow, furnish to the Board a return stating whether or not he has in that year acquired for distribution in Great Britain any film which is a registered film, and, if he has done so, giving with respect to each registered film which has been so acquired by him in that year such particulars as may be prescribed, being particulars which the Board consider necessary for the purposes of this Act, and

(b) not later than the end of April in the year next following that in which a return has been made by him in pursuance of paragraph (a) of this sub-section, furnish to the Board of Trade a supplementary return giving, with respect to any registered film acquired by him as aforesaid in the year to which the original return relates, such of the prescribed particulars as could not have been given in the original return :

Provided that, in relation to any such person who has ceased in any such year to carry on business as a renter in Great Britain, paragraph (a) of this.

sub-section shall have effect as if for the reference in that paragraph to the end of that year, there were substituted a reference to the date in that year on which he ceased to carry on business as aforesaid.

(2) Any such return as aforesaid shall be admissible in evidence for the purpose of determining whether the films mentioned in the return as having been acquired by the person by whom the return was made were acquired by him for distribution in Great Britain.

(3) Every person who has, in any exhibitors' quota year, carried on business as an exhibitor at a theatre in Great Britain, shall, within one month after the end of that year, furnish to the Board of Trade a return stating whether or not he has in that year exhibited to the public at a theatre in Great Britain a film which is a registered film, and, if so—

- (a) specifying the dates in that year on which any registered film was exhibited by him to the public at that theatre, and, in relation to each of those dates, the number of times the film was so exhibited, and
- (b) giving such other particulars (if any) with respect to the film as may be prescribed, being particulars which the Board consider necessary for the purposes of this Act ;

and the said return shall include a statement showing, in relation to each day in the said year on which cinematograph films were exhibited to the public at that theatre, the respective times at which the exhibition of films as aforesaid began and ended :

Provided that, if in any such year an exhibitor ceases to carry on the business of exhibiting registered films to the public at any particular theatre in Great Britain, the return to be made by him with respect to that theatre for that year shall be made within one month after the date on which he so ceases to carry on that business at that theatre.

(4) A return required by this section shall be deemed not to have been furnished in compliance with this section unless it is accompanied by a statutory declaration of the truth of the particulars contained in the return, being a declaration made by the person required to furnish the return.

(5) Every person by whom a return has been made to the Board of Trade in pursuance of this section, shall produce and furnish to the Board such books and other documents and other information by way of explanation of the return as the Board may require for the purposes of this Act.

(6) For the purposes of any proceedings which may be taken by virtue of this section, the fact that a person has been the holder of a renter's licence or of an exhibitor's licence shall be evidence that the said person has, in the year in respect of which the licence was granted, carried on business as a renter in Great Britain or carried on business as an exhibitor at a theatre in Great Britain, as the case may be.

Penalties in connection with the furnishing of information.

**38.** (1) If any person fails to produce, furnish or give to the Board of Trade, in accordance with the requirements of this Act, any book or other document, or any return, notification or other information, which he is required by this Act so to produce, furnish or give, he shall be liable, on summary conviction, to a fine not exceeding five pounds for every day during which the default continues.

(2) Any person who, in furnishing or giving any return, notification or other information for the purposes of any provisions of this Act, or, in recording any particulars in pursuance of this Act, knowingly or recklessly makes a statement false in a material particular, shall be guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.

Offences by corporations.

**39.** Where a body corporate is guilty of an offence under this Act, and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Regulations of Board of Trade.

**40.** (1) Subject to the following provisions of this section, the Board of Trade may make regulations prescribing anything which by this Act is required or authorised to be prescribed, and may make regulations prescribing—

- (a) the form of applications for the registration of films or for licences under this Act,
- (b) the particulars and evidence necessary for satisfying the Board that a film is a British film or is a film which ought to be registered under Part III of this Act as a renters' quota film, and
- (c) the form of the returns to be made, and the record books to be kept, under this Act,

and also regulations providing that any statutory declaration which a person is required by this Act to make shall be deemed to be properly made if it is made on his behalf by any such person as may be specified in the regulations; but no such regulations prescribing the payment of fees shall be of any effect unless those regulations have been made with the consent of the Treasury.

(2) Any regulations prescribing the amount of any fees shall be so framed as to secure, as nearly as may be, that the aggregate amount produced by those fees will be equal to the amount of the expenses incidental to the carrying out of this Act and the carrying out of the Act of 1927<sup>1</sup> after the commencement of this Act; but the amount of the fees payable on applications for the registration of films or for licences under this Act shall not exceed the amounts specified in the Second Schedule to this Act.

<sup>1</sup> See Vol. III of this publication.

41. (1) There shall be a council to be called "the Cinematograph Films Council", consisting of twenty-one members appointed by the Board of Trade; and of the members of the said Council—

The Cinema-  
tograph  
Films  
Council.

- (a) eleven (of whom one shall be the chairman of the Council) shall be persons appointed as being independent persons,
- (b) two shall be persons appointed as representing makers of British films,
- (c) two shall be persons appointed as representing renters,
- (d) four shall be persons appointed as representing exhibitors, and
- (e) two shall be persons appointed as representing persons employed by makers of British films.

(2) It shall be the duty of the Board of Trade to satisfy themselves, with respect to any person whom they propose to appoint under paragraph (a) of the preceding sub-section to be a member of the said Council, or who is a member of the Council by virtue of an appointment made under that paragraph, that he will have or has, as the case may be, no such financial or commercial interest as is likely to affect him in the discharge of his functions as a member of the Council; and any such person shall, whenever requested by the Board so to do, furnish to them such information as they consider necessary for the performance of their duty under this sub-section.

Before appointing a person to be a representative member of the said Council, the Board of Trade shall consult such bodies, if any, as appear to the Board to be representative of the interest concerned.

The Board of Trade shall not appoint to be a member of the said Council any person who has been convicted of an offence under the Act of 1927 or this Act.

(3) The functions of the said Council shall be—

- (a) to keep under review the progress of the cinematograph film industry in Great Britain, with particular reference to the development of that branch of the said industry which is engaged in the making of films and to report thereon to the Board of Trade at such times as the Council thinks fit,
- (b) to advise the Board in any matter relating to the cinematograph film industry in which the advice of the Council is sought by the Board (whether at the request of any persons appearing to the Board to have a substantial interest in the matter or otherwise), and
- (c) to make to the Board, as soon as may be after the end of the year beginning at the commencement of this Act and each subsequent year, a report of the proceedings of the Council during that year.

(4) As soon as may be after receiving any report made to them under paragraph (c) of the last preceding sub-section, the Board of Trade shall lay copies of the report before Parliament.

(5) The Board of Trade shall furnish to the said Council such information as the Council may reasonably require for the proper discharge of its functions.

(6) The quorum of the said Council shall be such number, not being less than ten, as the Board of Trade may determine; and the Council shall have power to regulate its own procedure, and may act notwithstanding a vacancy among the members thereof.

(7) A member of the said Council shall hold and vacate office in accordance with the terms of the instrument under which he is appointed, and a member of the Council who ceases to hold office shall be eligible, for re-appointment; but no person shall, on any occasion, be appointed to be a member of the Council for more than three years:

Provided that, if any member of the said Council is convicted of an offence under the Act of 1927<sup>1</sup> or this Act, his office as a member of the Council shall forthwith become vacant.

(8) The said Council may, subject to any such limitations and conditions as it thinks proper, delegate any of its functions to a committee of the Council consisting of such members of the Council as it may determine.

Institution  
of proceed-  
ings, and  
service of  
process.

**42.** (1) Proceedings for an offence under this Act shall not, in England, be instituted otherwise than by the Board of Trade.

(2) Any process to be served on any person for the purposes of this Act shall, if that person is out of Great Britain but has a place of business in Great Britain, be deemed to be duly served if it is addressed to that person and left at, or sent by post, to that place of business.

Exercise of  
powers of  
Board of  
Trade.

**43.** Anything required or authorised by or under this Act to be done by, to or before the Board of Trade, may be done by, to or before the President of the Board, any secretary, under-secretary or assistant-secretary of the Board, or any person authorised in that behalf by the President.

Interpreta-  
tion.

**44.** (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“the Act of 1927” means the Cinematograph Films Act, 1927<sup>1</sup>;

“Cinematograph Films Council” means the Cinematograph Films Council constituted under this Part of this Act;

“exhibitor” means a person carrying on the business of exhibiting cinematograph films to the public;

“exhibitor’s licence” means, in relation to any person, a licence under Part I of this Act authorising him to carry on business as an exhibitor;

“exhibitors’ quota year” means the year beginning with the first day of October nineteen hundred and thirty-eight or any of the nine succeeding years;

17 & 18  
Geo. 5, c. 29.

<sup>1</sup> See Vol. III of this publication.

“foreign country” means a country or territory which for the time being does not form part of His Majesty’s dominions ;

“labour costs”, in relation to a film, means the total amount of the payments paid or payable by the maker of the film in respect of the labour or services of persons directly engaged in the making of the film, in so far as those payments are attributable to the making of that film, but does not include payments in respect of copyright ; and for the purposes of this definition—

(a) the author of the scenario of a film shall be deemed to be a person directly engaged in the making of the film, and

(b) a person shall not be taken to be directly engaged in the making of a film by reason only—

(i) that he is financially interested in the making of a film, or is engaged, in an administrative or clerical capacity, as an officer or servant of an undertaking concerned with the making of the film, or

(ii) that he supplies goods used in the making of the film or is in the employment of a person who supplies such goods ;

“long film” means a film the length of which is not less than three thousand feet ;

“maker”, in relation to a film, means the person by whom the arrangements necessary for the making of the film are undertaken ;

“the register” means the register of films registered under Part III of this Act, and “registration” means registration under that Part of this Act ;

“registered” means registered either under Part III of this Act or under Part II of the Act of 1927<sup>1</sup> ;

“registered length”, in relation to a film, means the length of the film as registered for the time being ;

“renter” means a person who carries on the business of distributing cinematograph films to exhibitors, and, in relation to any renters’ quota period, includes a person who has carried on that business in that period ;

“renters’ licence” means, in relation to any person, a licence under Part I of this Act authorising him to carry on business as a renter ;

“renters’ quota period” means the year beginning with the first day of April nineteen hundred and thirty-eight, or the period of six months beginning with the first day of April or October in the year nineteen hundred and thirty-nine or in any of the eight succeeding years ;

“serial film or series of films” means a serial film or series of films consisting of a number of parts not exceeding thirteen, each of

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<sup>1</sup> See Vol. III of this publication.

which does not exceed two thousand feet in length, and which are intended to be exhibited on successive dates at intervals not exceeding fourteen days ;

“ short film ” means a film the length of which is less than three thousand feet ;

“ studio ” means a building constructed or adapted for the purpose of making films therein, and includes any land occupied with such a building, and a studio shall be deemed to be used in making a film if any part of that film, or of any other film used in making it, consists of photographs taken in that studio ; and “ studio scenes ” shall be construed accordingly ;

“ theatre ” means any premises used for the exhibition of films to the public, except that the expression shall not, in relation to any year,—

(a) be construed as including any church, chapel or other place of religious worship, or any hall or other premises used in connection with, and for the purposes of, any church, chapel or other such place as aforesaid, if the number of days on which registered films are exhibited in that year at the church, chapel, place, hall or premises (exclusive of any exhibition forming part of a religious service) does not exceed six, or

(b) be construed as including any premises used in that year for providing entertainments at which the exhibition of films is only part of the programme, if the total length of the registered film or films exhibited in the course of any one of those entertainments does not exceed two thousand feet ;

“ trade-shown ”, in relation to a film, means—

(a) displayed within the administrative county of London to exhibitors or their agents in a building, and under conditions, allowing for the satisfactory viewing of the film, after announcement to such persons at least seven days before the display, the display not being open to any member of the public on payment, or

(b) displayed to exhibitors or their agents on one occasion on which the film is exhibited to the public at a theatre in Great Britain during the first four consecutive days on which the film is so exhibited, the display taking place after announcement to such person at least seven days before the display.

(2) Any film registered under the Act of 1927<sup>1</sup> as a British film (not being a film which, by virtue of paragraph (ii) of the proviso to sub-section (1) of section twenty-seven of that Act, is to be deemed to be a registered film for the purposes of the provisions of that Act other than those relating to the renters' quota) shall be deemed, for the purposes of this Act, to be registered also as a renters' quota film.

<sup>1</sup> See Vol. III of this publication.

(3) A person shall, for the purposes of this Act, be deemed to acquire a film for distribution in any manner if he acquires the right to distribute the film in that manner.

(4) Any reference in this Act to distributing, or the distribution of, a film in any country or area shall be construed as a reference to distributing or the distribution of, the film to exhibitors in that country or area for public exhibition therein.

(5) For the purposes of this Act, the making of a film shall be deemed not to include the production of blank film or of positives intended for public exhibition, or the production of negatives by means of any process used for making copies of negatives.

In this sub-section the expressions "blank film", "positives" and "negatives" have the same meanings respectively as in section three of the Finance Act, 1925.

15 & 16  
Geo. 5, c. 36.

(6) For the purposes of this Act, registered films shall be deemed to be exhibited at more than one theatre at the same time if any part of the period during which any one registered film is exhibited at a theatre coincides with any part of the period during which any one registered film is exhibited at another theatre.

(7) For the purposes of this Act, each part of a serial film or series of films shall be deemed to be a separate film.

(8) Any reference in this Act to His Majesty's dominions shall be construed as including a reference to any British protectorate, and to any such territory, being a territory in respect of which a mandate on behalf of the League of Nations is being exercised by His Majesty, as His Majesty may designate by Order in Council.

Any Order in Council under this sub-section may be varied or revoked by a subsequent Order in Council.

45. (1) The provisions of the Act of 1927<sup>1</sup> specified in the Third Schedule<sup>2</sup> to this Act are hereby repealed. Repeals  
and trans-  
itional  
provisions.

(2) No film shall be registered under Part II of the Act of 1927<sup>1</sup> after the end of March nineteen hundred and thirty-eight; and any application for the registration of a film under the said Part II, being an application which has been made before the commencement of this Act and has not been determined before the commencement of this Act, shall be treated as an application made under Part III of this Act for the registration of the film under that Part of this Act.

(3) Any reference in the Act of 1927<sup>1</sup> to a licence or to a licensed person shall be construed as a reference to a licence granted under that Act, or, as the case may be, to a person holding an appropriate licence granted under that Act which is for the time being in force; but the power of the court under paragraph (a) or paragraph (b) of sub-section (2) of section twenty-four of

<sup>1</sup> See Vol. III of this publication.

<sup>2</sup> Not reprinted.



the said Act to order that no licence shall be issued to a person may be exercised with respect to the issue of a licence under this Act, as well as with respect to the issue of a licence under that Act.

(4) Section eighteen of the Act of 1927<sup>1</sup> shall not apply in relation to any acquisition of a film after the end of March nineteen hundred and thirty-eight, and section twenty-one of the said Act shall not apply in relation to any exhibition of a film after the end of September nineteen hundred and thirty-eight.

(5) The reference in sub-section (2) of section twenty-three of the Act of 1927<sup>1</sup> to the advisory committee thereafter mentioned shall be construed as a reference to the Cinematograph Films Council.

(6) Any regulations made by the Board of Trade under section twenty-nine of the Act of 1927<sup>1</sup> shall, if and so far as those regulations were in force immediately before the commencement of this Act and provide for matters other than the charging of fees, continue in force notwithstanding the repeal of that section, but may be revoked as if they were regulations under this Act; and the sum by which the aggregate amount produced up to the commencement of this Act by the fees charged under the Act of 1927<sup>1</sup> exceeds the expenses incidental to the carrying out of that Act up to the commencement of this Act shall be deemed to form part of the amount produced by the fees chargeable under this Act.

(7) The expressions "registered", "registration" and "the register", wherever used in the Act of 1927<sup>1</sup>, shall be construed as meaning respectively registered under that Act, registration under that Act and the register of films registered under that Act, except that in section nineteen of the said Act the expression "registered" shall, in relation to the year ending with the thirtieth day of September nineteen hundred and thirty-eight, be construed as meaning registered either under Part II of that Act or under Part III of this Act.

(8) Any Order in Council made in pursuance of sub-section (5) of section twenty-seven of the Act of 1927<sup>1</sup>, shall, if and so far as the Order was in force immediately before the commencement of this Act, have effect as if any reference in the Order to the said sub-section (5) included a reference to sub-section (8) of the last preceding section of this Act, and may be varied or revoked as if it were an Order under the said sub-section (8).

**46.** (1) This Act may be cited as the Cinematograph Films Act, 1938.

(2) This Act shall come into operation on the first day of April nineteen hundred and thirty-eight.

(3) This Act shall not extend to Northern Ireland; and for the purposes of the Government of Ireland Act, 1920, the enactment of legislation for purposes similar to the purposes of this Act shall be deemed not to be beyond the powers of the Parliament of Northern Ireland by reason only that such legislation may affect trade with places outside Northern Ireland. 10 & 11  
Geo. 5, c. 67.

Short title,  
commence-  
ment and  
extent.

<sup>1</sup> See Vol. III of this publication.

## SCHEDULES.

## FIRST SCHEDULE.

## PART I.

## RENTERS' QUOTAS.

Sections 1  
and 15.

<i>Year.</i>		<i>Long Films.</i>	<i>Short Films.</i>
For the year beginning with the 1st April 1938	.	. 15 per cent.	15 per cent.
Ditto	1939	. 20 „	15 „
Ditto	1940	. 22½ „	17½ „
Ditto	1941	. 22½ „	17½ „
Ditto	1942	. 25 „	20 „
Ditto	1943	. 25 „	20 „
Ditto	1944	. 27½ „	22½ „
Ditto	1945	. 27½ „	22½ „
Ditto	1946	. 30 „	25 „
Ditto	1947	. 30 „	25 „

## PART II.

## EXHIBITORS' QUOTAS.

Sections 7  
and 15.

<i>Year.</i>		<i>Long Films.</i>	<i>Short Films.</i>
For the year beginning with the 1st October 1938	.	. 12½ per cent.	12½ per cent.
Ditto	1939	. 15 „	12½ „
Ditto	1940	. 17½ „	15 „
Ditto	1941	. 17½ „	15 „
Ditto	1942	. 20 „	17½ „
Ditto	1943	. 20 „	17½ „
Ditto	1944	. 22½ „	20 „
Ditto	1945	. 22½ „	20 „
Ditto	1946	. 25 „	22½ „
Ditto	1947	. 25 „	22½ „

## SECOND SCHEDULE.

## MAXIMUM FEES.

Section 40.

								<i>Maximum Fee.</i>		
								£	s.	
On an application for the registration of a film	.	.	.	.	.	.	.	2	2	
On an application for a renter's licence	.	.	.	.	.	.	.	5	5	
On an application for an exhibitor's licence	.	.	.	.	.	.	.	2	2	
1*	*	*	*	*	*	*	*	*	*	*

<sup>1</sup> The Third Schedule which is a repealing Schedule has not been reprinted.

## THE TRADE MARKS ACT, 1938.

(1 &amp; 2 Geo. 6, c. 22.)

## REGISTRATION, INFRINGEMENT AND OTHER SUBSTANTIVE PROVISIONS.

*The register.*

## SECTION.

1. The register of trade marks.

*Effect of registration and the action for infringement.*

2. No action for infringement of unregistered trade mark.
3. Registration to be in respect of particular goods.
4. Right given by registration in Part A, and infringement thereof.
5. Right given by registration in Part B, and infringement thereof.
6. Infringement by breach of certain restrictions.
7. Saving for vested rights.
8. Saving for use of name, address, or description of goods.

*Registrability and validity of registration.*

9. Distinctiveness requisite for registration in Part A.
10. Capability of distinguishing requisite for registration in Part B.
11. Prohibition of registration of deceptive, etc., matter.
12. Prohibition of registration of identical and resembling trade marks.
13. Registration in Part A to be conclusive as to validity after seven years.
14. Registration subject to disclaimer.
15. Words used as name or description of an article or substance.
16. Effect of limitation as to colour, and of absence thereof.

*Procedure for, and duration of, registration.*

17. Application for registration.
18. Opposition to registration.
19. Registration.
20. Duration and renewal of registration.
21. Registration of parts of trade marks and of trade marks as a series.

*Assignment and transmission.*

SECTION.

- 22. Powers of, and restrictions on, assignment and transmission.
- 23. Certain trade marks to be associated so as to be assignable and transmissible as a whole only.
- 24. Power of registered proprietor to assign and give receipts.
- 25. Registration of assignments and transmissions.

*Use and non-use.*

- 26. Removal from register and imposition of limitations on ground of non-use.
- 27. Defensive registration of well-known trade marks.
- 28. Registered users.
- 29. Proposed use of trade mark by corporation to be constituted, etc.
- 30. Use of one of associated or substantially identical trade marks equivalent to use of another.
- 31. Use of trade mark for export trade.

*Rectification and correction of the register.*

- 32. General power to rectify entries in register.
- 33. Power to expunge or vary registration for breach of condition.
- 34. Correction of register.
- 35. Alteration of registered trade mark.
- 36. Adaptation of entries in register to amended or substituted classification of goods.

*Certification trade marks.*

- 37. Certification trade marks.

*Sheffield marks.*

- 38. Sheffield marks.

*Manchester Branch.*

- 39. Trade marks for textile goods.

GENERAL AND MISCELLANEOUS.

*Rules and fees.*

- 40. Power of Board of Trade to make rules.
- 41. Fees.

*Powers and duties of Registrar.*

## SECTION.

- 42. Preliminary advice by Registrar as to distinctiveness.
- 43. Hearing before exercise of Registrar's discretion.
- 44. Power of Registrar to award costs.
- 45. Annual reports of Registrar.

*Legal proceedings and appeals.*

- 46. Registration to be *primâ facie* evidence of validity.
- 47. Certificate of validity.
- 48. Costs of Registrar in proceedings before Court, and payment of costs by Registrar.
- 49. Trade usage, etc., to be considered.
- 50. Registrar's appearance in proceedings involving rectification.
- 51. Court's power to review Registrar's decision.
- 52. Discretion of Court in appeals.
- 53. Procedure on appeal to Board of Trade.
- 54. Procedure in cases of option to apply to Court or Registrar.

*Evidence.*

- 55. Mode of giving evidence.
- 56. Evidence of orders, etc., of Board of Trade.
- 57. Evidence of entries in register.
- 58. Evidence of things done by Registrar.

*Offences and restraint of use of Royal Arms.*

- 59. Falsification of entries in register a misdemeanour.
- 60. Fine for falsely representing a trade mark as registered.
- 61. Restraint of use of Royal Arms, etc.

*Miscellaneous.*

- 62. Change of form of trade connection not to be deemed to cause deception.
- 63. Jointly owned trade marks.
- 64. Trusts and equities.
- 65. Recognition of agents.
- 66. Saving for jurisdiction of courts in Scotland, Northern Ireland and Isle of Man.
- 67. Exercise of powers of Board of Trade.

*Supplemental.*

SECTION.

- 68. Interpretation.
- 69. Transitional provisions.
- 70. Repeal and savings.
- 71. Short title, commencement and extent.

SCHEDULES :

- First Schedule—Certification trade marks.
- Second Schedule—Sheffield marks.
- Third Schedule—Transitional provisions.
- Fourth Schedule—*Not reprinted.*

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THE TRADE MARKS ACT, 1938.

*An Act to consolidate the Trade Marks Act, 1905, the Trade Marks Act, 1919, and the Trade Marks (Amendment) Act, 1937.*

[13th April, 1938.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

REGISTRATION, INFRINGEMENT AND OTHER SUBSTANTIVE PROVISIONS.

*The register.*

1. (1) There shall continue to be kept at the Patent Office for the purposes of this Act the record called the register of trade marks, wherein shall be entered all registered trade marks with the names, addresses and descriptions of their proprietors, notifications of assignments and transmissions, the names, addresses and descriptions of all registered users, disclaimers, conditions, limitations, and such other matters relating to registered trade marks as may be prescribed. The register of trade marks.

(2) The register shall continue to be divided into two parts called respectively Part A and Part B.

(3) The register shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed.

(4) The register shall be kept under the control and management of the Comptroller-General of Patents, Designs and Trade Marks, who is in this Act referred to as "the Registrar."

*Effect of registration and the action for infringement.*

No action for  
infringement  
of unregis-  
tered trade  
mark.

2. No person shall be entitled to institute any proceeding to prevent or to recover damages for, the infringement of an unregistered trade mark, but nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

Registration  
to be in  
respect of  
particular  
goods.  
Right given  
by registra-  
tion in  
Part A, and  
infringement  
thereof.

3. A trade mark must be registered in respect of particular goods or classes of goods, and any question arising as to the class within which any goods fall, shall be determined by the Registrar, whose decision shall be final.

4. (1) Subject to the provisions of this section, and of sections seven and eight of this Act, the registration (whether before or after the commencement of this Act) of a person in part A of the register as proprietor of a trade mark (other than a certification trade mark) in respect of any goods shall, if valid, give or be deemed to have given to that person the exclusive right to the use of the trade mark in relation to those goods and, without prejudice to the generality of the foregoing words, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

(a) as being used as a trade mark ; or

(b) in a case in which the use is use upon the goods or in physical relation thereto or in an advertising circular or other advertisement issued to the public, as importing a reference to some person having the right either as proprietor or as registered user to use the trade mark or to goods with which such a person as aforesaid is connected in the course of trade.

(2) The right to the use of a trade mark given by registration as aforesaid shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any mode, in relation to goods to be sold or otherwise traded in in any place, in relation to goods to be exported to any market, or in any other circumstances, to which, having regard to any such limitations, the registration does not extend.

(3) The right to the use of a trade mark given by registration as aforesaid shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(a) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark, if, as to those goods or a bulk of which they form part, the proprietor of the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark ; or

(b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact a connection in the course of trade between any person and the goods.

(4) The use of a registered trade mark, being one of two or more registered trade marks that are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration as aforesaid, shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

5. (1) Except as provided by sub-section (2) of this section, the registration (whether before or after the commencement of this Act) of a person in Part B of the register as proprietor of a trade mark in respect of any goods shall, if valid, give or be deemed to have given to that person the like right in relation to those goods as if the registration had been in Part A of the register, and the provisions of the last foregoing section shall have effect in like manner in relation to a trade mark registered in Part B of the register as they have effect in relation to a trade mark registered in Part A of the register.

Right given  
by registra-  
tion in  
Part B, and  
infringement  
thereof.

(2) In any action for infringement of the right to the use of a trade mark given by registration as aforesaid in Part B of the register, otherwise than by an act that is deemed to be an infringement by virtue of the next succeeding section, no injunction or other relief shall be granted to the plaintiff if the defendant establishes to the satisfaction of the court that the use of which the plaintiff complains is not likely to deceive or cause confusion or to be taken as indicating a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the trade mark.

6. (1) Where, by a contract in writing made with the proprietor or a registered user of a registered trade mark, a purchaser or owner of goods enters into an obligation to the effect that he will not do, in relation to the goods, an act to which this section applies, any person who, being the owner for the time being of the goods and having notice of the obligation, does that act, or authorises it to be done, in relation to the goods, in the course of trade or with a view to any dealing therewith in the course of trade, shall be deemed thereby to infringe the right to the use of the trade mark given by the registration thereof, unless that person became the owner of the goods by purchase for money or money's worth in good faith before receiving notice of the obligation or by virtue of a title derived through another who so became the owner thereof.

Infringement  
by breach  
of certain  
restrictions.



(2) The acts to which this section applies are—

- (a) the application of the trade mark upon the goods after they have suffered alteration in any manner specified in the contract as respects their state or condition, get-up or packing ;
- (b) in a case in which the trade mark is upon the goods, the alteration, part removal or part obliteration thereof ;
- (c) in a case in which the trade mark is upon the goods, and there is also thereon other matter, being matter indicating a connection in the course of trade between the proprietor or registered user and the goods, the removal or obliteration, whether wholly or partly, of the trade mark unless that other matter is wholly removed or obliterated ;
- (d) in a case in which the trade mark is upon the goods, the application of any other trade mark to the goods ;
- (e) in a case in which the trade mark is upon the goods, the addition to the goods of any other matter in writing that is likely to injure the reputation of the trade mark.

(3) In this section references in relation to any goods to the proprietor, to a registered user, and to the registration of a trade mark shall be construed, respectively, as references to the proprietor in whose name the trade mark is registered, to a registered user who is registered, and to the registration of the trade mark, in respect of those goods, and the expression “ upon ” includes in relation to any goods a reference to physical relation thereto.

Saving for  
vested rights.

7. Nothing in this Act shall entitle the proprietor or a registered user of a registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date anterior —

- (a) to the use of the first-mentioned trade mark in relation to those goods by the proprietor or a predecessor in title of his ; or
- (b) to the registration of the first-mentioned trade mark in respect of those goods in the name of the proprietor or a predecessor in title of his ;

whichever is the earlier, or to object (on which use being proved) to that person being put on the register for that identical or nearly resembling trade mark in respect of those goods under sub-section (2) of section twelve of this Act.

Saving for  
use of name,  
address, or  
description  
of goods.

8. No registration of a trade mark shall interfere with—

- (a) any *bonâ fide* use by a person of his own name or of the name of his place of business, or of the name, or of the name of the place of business, of any of his predecessors in business ; or
- (b) the use by any person of any *bonâ fide* description of the character or quality of his goods, not being a description that would be

likely to be taken as importing any such reference as is mentioned in paragraph (b) of sub-section (1) of section four, or in paragraph (b) of sub-section (3) of section thirty-seven, of this Act.

*Registrability and validity of registration.*

9. (1) In order for a trade mark (other than a certification trade mark) to be registrable in Part A of the register, it must contain or consist of at least one of the following essential particulars :—

**Distinctive-  
ness requisite  
for registra-  
tion in Part  
A.**

- (a) the name of a company, individual, or firm, represented in a special or particular manner ;
- (b) the signature of the applicant for registration or some predecessor in his business ;
- (c) an invented word or invented words ;
- (d) a word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname ;
- (e) any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the foregoing paragraphs (a), (b), (c), and (d), shall not be registrable under the provisions of this paragraph except upon evidence of its distinctiveness.

(2) For the purposes of this section “distinctive” means adapted, in relation to the goods in respect of which a trade mark is registered or proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connection subsists, either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) In determining whether a trade mark is adapted to distinguish as aforesaid the tribunal may have regard to the extent to which—

- (a) the trade mark is inherently adapted to distinguish as aforesaid ; and
- (b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact adapted to distinguish as aforesaid.

10. (1) In order for a trade mark to be registrable in Part B of the register it must be capable, in relation to the goods in respect of which it is registered or proposed to be registered, of distinguishing goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connection subsists, either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.

**Capability of  
distinguishing  
requisite for  
registration  
in Part B.**

(2) In determining whether a trade mark is capable of distinguishing as aforesaid the tribunal may have regard to the extent to which—

(a) the trade mark is inherently capable of distinguishing as aforesaid ;  
and

(b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact capable of distinguishing as aforesaid.

(3) A trade mark may be registered in Part B notwithstanding any registration in Part A in the name of the same proprietor of the same trade mark or any part or parts thereof.

Prohibition  
of registra-  
tion of  
deceptive,  
etc., matter.

**11.** It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would, by reason of its being likely to deceive or cause confusion or otherwise, be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design.

Prohibition  
of registra-  
tion of  
identical and  
resembling  
trade marks.

**12.** (1) Subject to the provisions of sub-section (2) of this section, no trade mark shall be registered in respect of any goods or description of goods that is identical with a trade mark belonging to a different proprietor and already on the register in respect of the same goods or description of goods, or that so nearly resembles such a trade mark as to be likely to deceive or cause confusion.

(2) In case of honest concurrent use, or of other special circumstances which in the opinion of the Court or the Registrar make it proper so to do, the Court, or the Registrar may permit the registration of trade marks that are identical or nearly resemble each other in respect of the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as the Court or the Registrar, as the case may be, may think it right to impose.

(3) Where separate applications are made by different persons to be registered as proprietors respectively of trade marks that are identical or nearly resemble each other, in respect of the same goods or description of goods, the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him or on an appeal (which may be brought either to the Board of Trade or to the Court at the option of the appellant) by the Board or the Court, as the case may be.

Registration  
in Part A to  
be conclusive  
as to validity  
after seven  
years.

**13.** (1) In all legal proceedings relating to a trade mark registered in Part A of the register (including applications under section thirty-two of this Act) the original registration in Part A of the register of the trade mark shall, after the expiration of seven years from the date of that registration, be taken to be valid in all respects, unless—

(a) that registration was obtained by fraud, or

(b) the trade mark offends against the provisions of section eleven of this Act.

(2) Nothing in sub-section (1) of section five of this Act shall be construed as making applicable to a trade mark, as being a trade mark registered in Part B of the register, the foregoing provisions of this section relating to a trade mark registered in Part A of the register.

**14. If a trade mark—**

Registration  
subject to  
disclaimer.

- (a) contains any part not separately registered by the proprietor as a trade mark ; or
- (b) contains matter common to the trade or otherwise of a non-distinctive character ;

the Registrar or the Board of Trade or the Court, in deciding whether the trade mark shall be entered or shall remain on the register, may require, as a condition of its being on the register,—

- (i) that the proprietor shall disclaim any right to the exclusive use of any part of the trade mark, or to the exclusive use of all or any portion of any such matter as aforesaid, to the exclusive use of which the tribunal holds him not to be entitled ;  
or
- (ii) that the proprietor shall make such other disclaimer as the tribunal may consider necessary for the purpose of defining his rights under the registration :

Provided that no disclaimer on the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

**15. (1)** The registration of a trade mark shall not be deemed to have become invalid by reason only of any use, after the date of the registration of a word or words which the trade mark contains, or of which it consists, as the name or description of an article or substance :

Words used  
as name or  
description  
of an article  
or substance.

Provided that, if it is proved either—

- (a) that there is a well-known and established use of the word or words as the name or description of the article or substance by a person or persons carrying on a trade therein, not being use in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark or (in the case of a certification trade mark) goods certified by the proprietor ;  
or
- (b) that the article or substance was formerly manufactured under a patent (being a patent in force on, or granted after, the twenty-third day of December nineteen hundred and nineteen), that a period of two years or more after the cesser of the patent has elapsed, and that the word or words is or are the only practicable name or description of the article or substance ;

the provisions of the next succeeding sub-section shall have effect.

(2) Where the facts mentioned in paragraph (a) or (b) of the proviso to the foregoing sub-section are proved with respect to any word or words, then—

- (a) if the trade mark consists solely of that word or those words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description, shall be deemed for the purposes of section thirty-two of this Act to be an entry wrongly remaining on the register ;
- (b) if the trade mark contains that word or those words and other matter, the Court or the Registrar, in deciding whether the trade mark shall remain on the register, so far as regards registration in respect of the article or substance in question and of any goods of the same description, may in case of a decision in favour of its remaining on the register require as a condition thereof that the proprietor shall disclaim any right to the exclusive use in relation to that article or substance and any goods of the same description of that word or those words, so, however, that no disclaimer on the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made ; and
- (c) for the purposes of any other legal proceedings relating to the trade mark,—
  - (i) if the trade mark consists solely of that word or those words, all rights of the proprietor whether under the common law or by registration, to the exclusive use of the trade mark in relation to the article or substance in question or to any goods of the same description, or
  - (ii) if the trade mark contains that word or those words and other matter, all such rights of the proprietor to the exclusive use of that word or those words in such relation as aforesaid,

shall be deemed to have ceased on the date at which the use mentioned in paragraph (a) of the proviso to the foregoing sub-section first became well known and established, or at the expiration of the period of two years mentioned in paragraph (b) of that proviso.

(3) No word which is the commonly used and accepted name of any, single chemical element or single chemical compound, as distinguished from a mixture, shall be registered as a trade mark in respect of a chemical substance or preparation, and any such registration in force at the commencement of this Act or thereafter shall, notwithstanding anything in section thirteen of this Act, be deemed for the purposes of section thirty-two of this

Act to be an entry made in the register without sufficient cause, or an entry wrongly remaining on the register, as the circumstances may require :

Provided that the foregoing provisions of this sub-section shall not have effect in relation to a word which is used to denote only a brand or make of the element or compound as made by the proprietor or a registered user of the trade mark, as distinguished from the element or compound as made by others, and in association with a suitable name or description open to the public use.

16. A trade mark may be limited in whole or in part to one or more specified colours, and in any such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of the trade mark.

Effect of limitation as to colour, and of absence thereof.

If and so far as a trade mark is registered without limitation of colour, it shall be deemed to be registered for all colours.

*Procedure for, and duration of, registration.*

17. (1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering it must apply in writing to the Registrar in the prescribed manner for registration either in Part A or in Part B of the register.

Application for registration.

(2) Subject to the provisions of this Act, the Registrar may refuse the application, or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think right.

(3) In the case of an application for registration of a trade mark (other than a certification trade mark) in Part A of the register, the Registrar may, if the applicant is willing instead of refusing the application, treat it as an application for registration in Part B and deal with the application accordingly.

(4) In the case of a refusal or conditional acceptance, the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving thereat, and the decision shall be subject to appeal to the Board of Trade or to the Court at the option of the applicant.

(5) An appeal under this section shall be made in the prescribed manner, and on the appeal the tribunal shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what amendments, modifications, conditions or limitations, if any, the application is to be accepted.

(6) Appeals under this section shall be heard on the materials stated as aforesaid by the Registrar, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those so stated as aforesaid by him, except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken,

the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(7) The Registrar or the Board of Trade or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as the Registrar or the Board of Trade or the Court, as the case may be, may think fit.

**Opposition to  
registration.**

**18.** (1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted to be advertised in the prescribed manner, and the advertisement shall set forth all conditions and limitations subject to which the application has been accepted :

Provided that the Registrar may cause an application to be advertised before acceptance if it is made under paragraph (e) of sub-section (1) of section nine of this Act, or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do, and where an application has been so advertised the Registrar may, if he thinks fit, advertise it again when it has been accepted but shall not be bound so to do.

(2) Any person may, within the prescribed time from the date of the advertisement of an application, give notice to the Registrar of opposition to the registration.

(3) The notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(4) The Registrar shall send a copy of the notice to the applicant, and within the prescribed time after receipt thereof the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(5) If the applicant sends such a counter-statement as aforesaid, the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(6) The decision of the Registrar shall be subject to appeal to the Court.

(7) An appeal under this section shall be made in the prescribed manner, and on the appeal the Court shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(8) On the hearing of an appeal under this section any party may, either in the manner prescribed or by special leave of the Court, bring forward further material for the consideration of the Court.

(9) On an appeal under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar, other than those so stated as aforesaid by the opponent, except by leave of the Court. Where any further grounds of objection are taken, the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(10) On an appeal under this section the Court may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity thereof, but in any such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(11) If a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such a notice, or an appellant, neither resides nor carries on business in the United Kingdom, the tribunal may require him to give security for costs of the proceedings before the tribunal relative to the opposition or to the appeal, as the case may be, and in default of such security being duly given may treat the opposition or application, or the appeal, as the case may be, as abandoned.

**19.** (1) When an application for registration of a trade mark in Part A **Registration.** or in Part B of the register has been accepted, and either—

- (a) the application has not been opposed and the time for notice of opposition has expired, or
- (b) the application has been opposed and the opposition has been decided in favour of the applicant,

the Registrar shall, unless the application has been accepted in error or unless the Board of Trade otherwise direct, register the trade mark in Part A or Part B, as the case may be, and the trade mark, when registered, shall be registered as of the date of the application for registration, and that date shall be deemed for the purposes of this Act to be the date of registration :

Provided that the foregoing provisions of this sub-section, relating to the date as of which a trade mark shall be registered and to the date to be deemed to be the date of registration, shall, as respects a trade mark registered under this Act with the benefit of any enactment, relating to international or inter-imperial arrangements, have effect subject to the provisions of that enactment.

(2) On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof sealed with the seal of the Patent Office.

(3) Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.



Duration  
and renewal  
of registra-  
tion.

**20.** (1) The registration of a trade mark shall be for a period of seven years, but may be renewed from time to time in accordance with the provisions of this section :

Provided that, in relation to a registration as of a date before the appointed day, this sub-section shall have effect with the substitution of a period of fourteen years for the said period of seven years.

(2) The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of the trade mark for a period of fourteen years from the date of expiration of the original registration or of the last renewal of registration, as the case may be, which date is in this section referred to as "the expiration of the last registration."

(3) At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and, if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with, the Registrar may remove the trade mark from the register, subject to such conditions, if any, as to its restoration to the register as may be prescribed.

(4) Where a trade mark has been removed from the register for non-payment of the fee for renewal, it shall, nevertheless, for the purpose of any application for the registration of a trade mark during one year next after the date of the removal, be deemed to be a trade mark that is already on the register :

Provided that the foregoing provisions of this sub-section shall not have effect where the tribunal is satisfied either—

- (a) that there has been no *bonâ fide* trade use of the trade mark that has been removed during the two years immediately preceding its removal ; or
- (b) that no deception or confusion would be likely to arise from the use of the trade mark that is the subject of the application for registration by reason of any previous use of the trade mark that has been removed.

Registration  
of parts of  
trade marks  
and of trade  
marks as a  
series.

**21.** (1) Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the whole and any such part as separate trade marks.

Each such separate trade mark must satisfy all the conditions of an independent trade mark and shall, subject to the provisions of sub-section (3) of section twenty-three and sub-section (2) of section thirty of this Act, have all the incidents of an independent trade mark.

(2) Where a person claiming to be the proprietor of several trade marks, in respect of the same goods or description of goods, which, while resembling

each other in the material particulars thereof, yet differ in respect of—

- (a) statements of the goods in relation to which they are respectively used or proposed to be used ; or
- (b) statements of number, price, quality or names of places ; or
- (c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark ; or
- (d) colour ;

seeks to register those trade marks, they may be registered as a series in one registration.

*Assignment and transmission.*

**22.** (1) Notwithstanding any rule of law or equity to the contrary, a registered trade mark shall be, and shall be deemed always to have been, assignable and transmissible either in connection with the goodwill of a business or not. Powers of, and restrictions on, assignment and transmission.

(2) A registered trade mark shall be, and shall be deemed always to have been, assignable and transmissible in respect either of all the goods in respect of which it is registered, or was registered, as the case may be, or of some (but not all) of those goods.

(3) The provisions of the two foregoing sub-sections shall have effect in the case of an unregistered trade mark used in relation to any goods as they have effect in the case of a registered trade mark registered in respect of any goods, if at the time of the assignment or transmission of the unregistered trade mark it is or was used in the same business as a registered trade mark, and if it is or was assigned or transmitted at the same time and to the same person as that registered trade mark and in respect of goods all of which are goods in relation to which the unregistered trade mark is or was used in that business and in respect of which that registered trade mark is or was assigned or transmitted.

(4) Notwithstanding anything in the foregoing sub-sections, a trade mark shall not be, or be deemed to have been, assignable or transmissible in a case in which as a result of an assignment or transmission there would in the circumstances subsist, or have subsisted, whether under the common law or by registration, exclusive rights in more than one of the persons concerned to the use in relation to the same goods or description of goods, of trade marks nearly resembling each other or of identical trade marks, if, having regard to the similarity of the goods and of the trade marks, the use of the trade marks in exercise of those rights would be or have been, likely to deceive or cause confusion :

Provided that, where a trade mark is, or has been, assigned or transmitted in such a case as aforesaid, the assignment or transmission shall not be deemed to be, or to have been, invalid under this sub-section if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, or were, having regard to limitations imposed thereon, such as

not to be exercisable by two or more of those persons in relation to goods to be sold, or otherwise traded in within the United Kingdom (otherwise than for export therefrom) or in relation to goods to be exported to the same market outside the United Kingdom.

(5) The proprietor of a registered trade mark who proposes to assign it in respect of any goods in respect of which it is registered may submit to the Registrar in the prescribed manner a statement of case setting out the circumstances, and the Registrar may issue to him a certificate stating whether, having regard to the similarity of the goods and of the trade marks referred to in the case, the proposed assignment of the first-mentioned trade mark would or would not be invalid under the last foregoing sub-section, and a certificate so issued shall, subject to the provisions of this section as to appeal and unless it is shown that the certificate was obtained by fraud or misrepresentation, be conclusive as to the validity or invalidity under the last foregoing sub-section of the assignment in so far as such validity or invalidity depends upon the facts set out in the case, but, as regards a certificate in favour of validity, only if application for the registration under section twenty-five of this Act of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.

(6) Notwithstanding anything in sub-sections (1) to (3) of this section, a trade mark shall not, on or after the appointed day, be assignable or transmissible in a case in which as a result of an assignment or transmission thereof there would in the circumstances subsist, whether under the common law or by registration, an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to goods to be sold, or otherwise traded in, in a place or places in the United Kingdom, and an exclusive right in another of those persons to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to the same goods or description of goods limited to use in relation to goods to be sold, or otherwise traded in, in another place or other places in the United Kingdom :

Provided that, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or of a person who claims that a trade mark has been transmitted to him or to a predecessor in title of his on or after the appointed day, in any such case, the Registrar, if he is satisfied that in all the circumstances the use of the trade marks in exercise of the said rights would not be contrary to the public interest, may approve the assignment or transmission, and an assignment or transmission so approved shall not be deemed to be, or to have been, invalid under this sub-section or under sub-section (4) of this section so, however, that in the case of a registered trade mark this provision shall not have effect unless application for the registration under section twenty-five of this Act of the title of the person becoming entitled is made within six months from the date on which the approval is given or, in the case of a transmission, was made before that date.

(7) Where an assignment in respect of any goods of a trade mark that is at the time of the assignment used in a business in those goods is made,

on or after the appointed day, otherwise than in connection with the goodwill of that business, the assignment shall not take effect until the following requirements have been satisfied, that is to say, the assignee must, not later than the expiration of six months from the date on which the assignment is made or within such extended period, if any, as the Registrar may allow, apply to him for directions with respect to the advertisement of the assignment, and must advertise it in such form and manner and within such period as the Registrar may direct.

(8) Any decision of the Registrar under this section shall be subject to appeal to the Court.

**23.** (1) Trade marks that are registered as, or that are deemed by virtue of this Act to be, associated trade marks shall be assignable and transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks.

Certain trade marks to be associated so as to be assignable and transmissible as a whole only.

(2) Where a trade mark that is registered, or is the subject of an application for registration, in respect of any goods is identical with another trade mark that is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods, or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may at any time require that the trade marks shall be entered on the register as associated trade marks.

Any decision of the Registrar under this sub-section shall be subject to appeal to the Board of Trade, or to the Court, at the option of the appellant.

(3) Where a trade mark and any part or parts thereof are, by virtue of sub-section (1) of section twenty-one of this Act, registered as separate trade marks in the name of the same proprietor, they shall be deemed to be, and shall be registered as, associated trade marks.

(4) All trade marks that are, by virtue of sub-section (2) of section twenty-one of this Act, registered as a series in one registration shall be deemed to be, and shall be registered as, associated trade marks.

(5) On application made in the prescribed manner by the registered proprietor of two or more trade marks registered as associated trade marks, the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by another person in relation to any of the goods in respect of which it is registered, and may amend the register accordingly.

Any decision of the Registrar under this sub-section shall be subject to appeal to the Board of Trade, or to the Court, at the option of the appellant.

**24.** Subject to the provisions of this Act, the person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from the register to be vested in any other person, have power to assign the trade mark, and to give effectual receipts for any consideration for an assignment thereof.

Power of registered proprietor to assign and give receipts.

Registration  
of assign-  
ments and  
transmis-  
sions.

25. (1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall make application to the Registrar to register his title, and the Registrar shall, on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of the trade mark in respect of the goods in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the register.

(2) Any decision of the Registrar under this section shall be subject to appeal to the Court.

(3) Except for the purposes of an appeal under this section or of an application under section thirty-two of this Act, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of sub-section (1) of this section shall not be admitted in evidence in any court in proof of the title to a trade mark unless the court otherwise directs.

#### *Use and non-use.*

Removal  
from register  
and imposi-  
tion of  
limitations  
on ground  
of non-use.

26. (1) Subject to the provisions of the next succeeding section, a registered trade mark may be taken off the register in respect of any of the goods in respect of which it is registered on application by any person aggrieved to the Court, or, at the option of the applicant and subject to the provisions of section fifty-four of this Act, to the Registrar, on the ground either—

- (a) that the trade mark was registered without any *bonâ fide* intention on the part of the applicant for registration that it should be used in relation to those goods by him, and that there has in fact been no *bonâ fide* use of the trade mark in relation to those goods by any proprietor thereof for the time being up to the date one month before the date of the application; or
- (b) that up to the date one month before the date of the application a continuous period of five years or longer elapsed during which the trade mark was a registered trade mark and during which there was no *bonâ fide* use thereof in relation to those goods by any proprietor thereof for the time being :

Provided that (except where the applicant has been permitted under sub-section (2) of section twelve of this Act to register an identical or nearly resembling trade mark in respect of the goods in question or where the tribunal is of opinion that he might properly be permitted so to register such a trade mark) the tribunal may refuse an application made under paragraph (a) or (b) of this sub-section in relation to any goods, if it is shown that there has been, before the relevant date or during the relevant period, as the case may be, *bonâ fide* use of the trade mark by any proprietor thereof for the time being in relation to goods of the same description, being goods in respect of which the trade mark is registered

(2) Where in relation to any goods in respect of which a trade mark is registered—

- (a) the matters referred to in paragraph (b) of the foregoing sub-section are shown so far as regards non-use of the trade mark in relation to goods to be sold, or otherwise traded in, in a particular place in the United Kingdom (otherwise than for export from the United Kingdom), or in relation to goods to be exported to a particular market outside the United Kingdom ; and
- (b) a person has been permitted under sub-section (2) of section twelve of this Act to register an identical or nearly resembling trade mark in respect of those goods under a registration extending to use in relation to goods to be sold, or otherwise traded in, in that place (otherwise than for export from the United Kingdom), or in relation to goods to be exported to that market, or the tribunal is of opinion that he might properly be permitted so to register such a trade mark ;

on application by that person to the Court, or, at the option of the applicant and subject to the provisions of section fifty-four of this Act, to the Registrar, the tribunal may impose on the registration of the first-mentioned trade mark such limitations as the tribunal thinks proper for securing that that registration shall cease to extend to such use as last aforesaid.

(3) An applicant shall not be entitled to rely for the purposes of paragraph (b) of sub-section (1), or for the purposes of sub-section (2), of this section on any non-use of a trade mark that is shown to have been due to special circumstances in the trade and not to any intention not to use or to abandon the trade mark in relation to the goods to which the application relates.

**27.** (1) Where a trade mark consisting of an invented word or invented words has become so well known as respects any goods in respect of which it is registered and in relation to which it has been used that the use thereof in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person entitled to use the trade mark in relation to the first-mentioned goods, then, notwithstanding that the proprietor registered in respect of the first-mentioned goods does not use or propose to use the trade mark in relation to those other goods and notwithstanding anything in the last foregoing section, the trade mark may, on the application in the prescribed manner of the proprietor registered in respect of the first-mentioned goods, be registered in his name in respect of those other goods as a defensive trade mark and while so registered, shall not be liable to be taken off the register in respect of those goods under the last foregoing section.

Defensive registration of well-known trade marks.

(2) The registered proprietor of a trade mark may apply for the registration thereof in respect of any goods as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods otherwise than as a defensive trade mark, or may apply for the registration thereof

in respect of any goods otherwise than as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods as a defensive trade mark, in lieu in each case of the existing registration.

(3) A trade mark registered as a defensive trade mark and that trade mark as otherwise registered in the name of the same proprietor shall, notwithstanding that the respective registrations are in respect of different goods, be deemed to be, and shall be registered as, associated trade marks.

(4) On application by any person aggrieved to the Court or, at the option of the applicant and subject to the provisions of section fifty-four of this Act, to the Registrar, the registration of a trade mark as a defensive trade mark may be cancelled on the ground that the requirements of sub-section (1) of this section are no longer satisfied in respect of any goods in respect of which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark, or may be cancelled as respects any goods in respect of which it is registered as a defensive trade mark on the ground that there is no longer any likelihood that the use of the trade mark in relation to those goods would be taken as giving the indication mentioned in sub-section (1) of this section.

(5) The Registrar may at any time cancel the registration as a defensive trade mark of a trade mark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trade mark.

(6) Except as otherwise expressly provided in this section, the provisions of this Act shall apply in respect of the registration of trade marks as defensive trade marks and of trade marks so registered as they apply in other cases.

Registered  
users.

28. (1) Subject to the provisions of this section, a person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered (otherwise than as a defensive trade mark) and either with or without conditions or restrictions.

The use of a trade mark by a registered user thereof in relation to goods with which he is connected in the course of trade and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject, is in this Act referred to as the "permitted use" thereof.

(2) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof, and shall be deemed not to be use by a person other than the proprietor, for the purposes of section twenty-six of this Act and for any other purpose for which such use is material under this Act or at common law.

(3) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and, if the proprietor refuses or neglects to do so within two months after being so called upon, the

registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant.

A proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(4) Where it is proposed that a person should be registered as a registered user of a trade mark, the proprietor and the proposed registered user must apply in writing to the Registrar in the prescribed manner and must furnish him with a statutory declaration made by the proprietor, or by some person authorised to act on his behalf and approved by the Registrar,—

- (a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered users application may be made ;
- (b) stating the goods in respect of which registration is proposed ;
- (c) stating any conditions or restrictions proposed with respect to the characteristics of the goods, to the mode or place of permitted use, or to any other matter ; and
- (d) stating whether the permitted use is to be for a period or without limit of period, and, if for a period, the duration thereof ;

and with such further documents, information or evidence as may be required under the rules or by the Registrar.

(5) When the requirements of the last foregoing sub-section have been complied with, if the Registrar, after considering the information furnished to him under that sub-section, is satisfied that in all the circumstances the use of the trade mark in relation to the proposed goods or any of them by the proposed registered user subject to any conditions or restrictions which the Registrar thinks proper would not be contrary to the public interest, the Registrar may register the proposed registered user as a registered user in respect of the goods as to which he is so satisfied subject as aforesaid.

(6) The Registrar shall refuse an application under the foregoing provisions of this section if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(7) The Registrar shall, if so required by an applicant, take steps for securing that information given for the purposes of an application under the foregoing provisions of this section (other than matter entered in the register) is not disclosed to rivals in trade.

(8) Without prejudice to the provisions of section thirty-two of this Act, the registration of a person as a registered user—

- (a) may be varied by the Registrar as regards the goods in respect of which, or any conditions or restrictions subject to which,



it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark to which the registration relates ;

(b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark ; or

(c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, that is to say,—

(i) that the registered user has used the trade mark otherwise than by way of the permitted use, or in such a way as to cause, or to be likely to cause, deception or confusion ;

(ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration ;

(iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested.

(9) Provision shall be made by the rules for the notification of the registration of a person as a registered user to any other registered user of the trade mark, and for the notification of an application under the last foregoing sub-section to the registered proprietor and each registered user (not being the applicant) of the trade mark, and for giving to the applicant on such an application, and to all persons to whom such an application is notified and who intervene in the proceedings in accordance with the rules, an opportunity of being heard.

(10) The Registrar may at any time cancel the registration of a person as a registered user of a trade mark in respect of any goods in respect of which the trade mark is no longer registered.

(11) Any decision of the Registrar under the foregoing provisions of this section shall be subject to appeal to the Court.

(12) Nothing in this section shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

Proposed  
use of trade  
mark by  
corporation  
to be con-  
stituted, etc.

**29.** (1) No application for the registration of a trade mark in respect of any goods shall be refused, nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trade mark,—

(a) if the tribunal is satisfied that a body corporate is about to be constituted, and that the applicant intends to assign the trade mark to the corporation with a view to the use thereof in relation to those goods by the corporation ; or

(b) if the application is accompanied by an application for the registration of a person as a registered user of the trade mark, and the tribunal is satisfied that the proprietor intends it to be used by that person in relation to those goods and the tribunal is also satisfied that that person will be registered as a registered user thereof immediately after the registration of the trade mark.

(2) The provisions of section twenty-six of this Act shall have effect, in relation to a trade mark registered under the power conferred by the foregoing sub-section, as if for the reference, in paragraph (a) of sub-section (1) of that section, to intention on the part of an applicant for registration that a trade mark should be used by him there were substituted a reference to intention on his part that it should be used by the corporation or registered user concerned.

(3) The tribunal may, as a condition of the exercise of the power conferred by sub-section (1) of this section in favour of an applicant who relies on intention to assign to a corporation as aforesaid, require him to give security for the costs of any proceedings before the tribunal relative to any opposition or appeal, and in default of such security being duly given may treat the application as abandoned.

(4) Where a trade mark is registered in respect of any goods under the power conferred by sub-section (1) of this section in the name of an applicant who relies on intention to assign to a corporation as aforesaid, then, unless within such period as may be prescribed, or within such further period not exceeding six months as the Registrar may on application being made to him in the prescribed manner allow, the corporation has been registered as the proprietor of the trade mark in respect of those goods, the registration shall cease to have effect in respect thereof at the expiration of that period, and the Registrar shall amend the register accordingly.

**30.** (1) Where under the provisions of this Act use of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as the tribunal thinks right accept use of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.

Use of one of associated or substantially identical trade marks equivalent to use of another.

(2) The use of the whole of a registered trade mark shall for the purposes of this Act be deemed to be also a use of any registered trade mark, being a part thereof, registered in the name of the same proprietor by virtue of sub-section (1) of section twenty-one of this Act.

**31.** The application in the United Kingdom of a trade mark to goods to be exported from the United Kingdom, and any other act done in the United Kingdom in relation to goods to be so exported which, if done in relation to goods to be sold or otherwise traded in within the United Kingdom, would constitute use of a trade mark therein, shall be deemed to constitute use of the trade mark in relation to those goods for any purpose for which such use is material under this Act or at common law.

Use of trade mark for export trade.

*Rectification and correction of the register.*

General  
power to  
rectify  
entries in  
register.

**32.** (1) Any person aggrieved by the non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Court or, at the option of the applicant and subject to the provisions of section fifty-four of this Act, to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as the tribunal may think fit.

(2) The tribunal may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register.

(3) In case of fraud in the registration, assignment or transmission of a registered trade mark, the Registrar may himself apply to the Court under the provisions of this section.

(4) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served in the prescribed manner on the Registrar, and the Registrar shall on receipt of the notice rectify the register accordingly.

(5) The power to rectify the register conferred by this section shall include power to remove a registration in Part A of the register to Part B.

Power to  
expunge  
or vary  
registration  
for breach  
of condition.

**33.** On application by any person aggrieved to the Court, or, at the option of the applicant and subject to the provisions of section fifty-four of this Act, to the Registrar, or on application by the Registrar to the Court, the tribunal may make such order as the tribunal may think fit for expunging or varying the registration of a trade mark on the ground of any contravention of, or failure to observe, a condition entered on the register in relation thereto.

Correction  
of register.

**34.** (1) The Registrar may, on request made in the prescribed manner by the registered proprietor,—

- (a) correct any error in the name, address or description of the registered proprietor of a trade mark ;
- (b) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark ;
- (c) cancel the entry of a trade mark on the register ;
- (d) strike out any goods or classes of goods from those in respect of which a trade mark is registered ; or
- (e) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark.

(2) The Registrar may, on request made in the prescribed manner by a registered user of a trade mark, correct any error, or enter any change, in the name, address or description of the registered user.

(3) Any decision of the Registrar under this section shall be subject to appeal to the Board of Trade, or to the Court, at the option of the applicant.

**35.** (1) The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit. Alteration of registered trade mark.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Any decision of the Registrar under this section shall be subject to appeal to the Board of Trade or to the Court, at the option of the appellant.

(4) Where leave as aforesaid is granted, the trade mark as altered shall be advertised in the prescribed manner, unless it has already been advertised, in the form to which it has been altered, in an advertisement under sub-section (2) of this section.

**36.** (1) The Board of Trade may from time to time make such rules, prescribe such forms and generally do such things as they think expedient, for empowering the Registrar to amend the register, whether by making or expunging or varying entries therein, so far as may be requisite for the purpose of adapting the designation therein of the goods or classes of goods in respect of which trade marks are registered to any amended or substituted classification that may be prescribed. Adaptation of entries in register to amended or substituted classification of goods.

(2) The Registrar shall not, in exercise of any power conferred on him for the purpose aforesaid, make any amendment of the register that would have the effect of adding any goods or classes of goods to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made, or of antedating the registration of a trade mark in respect of any goods :

Provided that this sub-section shall not have effect in relation to goods as to which the Registrar is satisfied that compliance with this sub-section in relation thereto would involve undue complexity and that the addition or antedating, as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(3) A proposal for the amendment of the register for the purpose aforesaid shall be notified to the registered proprietor of the trade mark affected, shall be subject to appeal by the registered proprietor to the Board of Trade, or at his option to the Court, shall be advertised with any modifications, and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of the last

foregoing sub-section, and the decision of the Registrar on any such opposition shall be subject to appeal to the Court.

*Certification trade marks.*

Certification  
trade marks.

37. (1) A mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic, from goods not so certified shall be registrable as a certification trade mark in Part A of the register in respect of those goods in the name, as proprietor thereof, of that person :

Provided that a mark shall not be so registrable in the name of a person who carries on a trade in goods of the kind certified.

(2) In determining whether a mark is adapted to distinguish as aforesaid, the tribunal may have regard to the extent to which—

(a) the mark is inherently adapted to distinguish as aforesaid in relation to the goods in question ; and

(b) by reason of the use of the mark or of any other circumstances the mark is in fact adapted to distinguish as aforesaid in relation to the goods in question.

(3) Subject to the provisions of sub-sections (4) to (6) of this section, and of sections seven and eight of this Act, the registration of a person as proprietor of a certification trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the trade mark in relation to those goods, and, without prejudice to the generality of the foregoing words, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a person authorised by him under the regulations in that behalf using it in accordance therewith, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

(a) as being use as a trade mark ; or

(b) in a case in which the use is use upon the goods or in physical relation thereto or in an advertising circular or other advertisement issued to the public, as importing a reference to some person having the right either as proprietor or by his authorisation under the relevant relations to use the trade mark or to goods certified by the proprietor.

(4) The right to the use of a certification trade mark given by registration as aforesaid shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in in any place, in relation to goods to be exported to any market,

or in any other circumstances, to which, having regard to any such limitations, the registration does not extend.

(5) The right to the use of a certification trade mark given by registration as aforesaid shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

- (a) in relation to goods certified by the proprietor of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or another in accordance with his authorisation under the relevant regulations has applied the trade mark and has not subsequently removed or obliterated it, or the proprietor has at any time expressly or impliedly consented to the use of the trade mark ; or
- (b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods are certified by the proprietor ;

Provided that paragraph (a) of this sub-section shall not have effect in the case of use consisting of the application of any such mark as aforesaid to any goods, notwithstanding that they are such goods as are mentioned in that paragraph, if such application is contrary to the relevant regulations.

(6) Where a certification trade mark is one of two or more registered trade marks that are identical or nearly resemble each other, the use of any of those trade marks in exercise of the right to the use of that trade mark given by registration shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

(7) There shall be deposited at the Patent Office in respect of every trade mark registered under this section regulations approved by the Board of Trade for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods and to authorise the use of the trade mark, and may contain any other provisions that the Board of Trade may require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor to certify goods or to authorise the use of the trade mark in accordance with the regulations). Regulations so deposited shall be open to inspection in like manner as the register.

(8) A certification trade mark shall not be assignable or transmissible otherwise than with the consent of the Board of Trade.

(9) The provisions of the First Schedule to this Act shall have effect with respect to the registration of a mark under this section and to marks so registered.

*Sheffield marks.*

Sheffield  
marks.

**38.** The provisions of the Second Schedule to this Act shall have effect with respect to the master, wardens, searchers, assistants, and commonalty of the Company of Cutlers in Hallamshire, in the county of York (in this Act called "the Cutlers' Company"), and the marks or devices assigned or registered by the master, wardens, searchers and assistants of that Company.

*Manchester Branch.*

Trade marks  
for textile  
goods.

**39.** (1) The Manchester Branch of the Trade Marks Registry of the Patent Office (in this section referred to as "the Manchester Branch") shall be continued under a chief officer, who shall be styled "the Keeper of the Manchester Branch" and shall act under the direction of the Registrar.

(2) The rules shall specify certain of the classes for the time being established for the purposes of the registration of trade marks (being such of those classes as consist of, or appear to the Board of Trade to relate materially to, any of the following goods, that is to say, goods included immediately before the appointed day in any of the classes numbered twenty-three to thirty-five and thirty-eight respectively and similar goods made from artificial silk or from other artificial fibres) as being classes to which this section applies.

In this section the expression "textile goods" means goods of any of the classes for the time being so specified other than goods of a kind as to which it may be provided by the rules that this section is not to apply thereto.

(3) The rules for prescribing the manner in which applications for the registration of trade marks are to be made shall make provision for the sending of an application for the registration of a trade mark in respect of textile goods to the Registrar either at the Patent Office or at the Manchester Branch, at the option of the applicant.

(4) The Keeper of the Manchester Branch shall furnish the Registrar with a report on every application for the registration of a trade mark sent to the Manchester Branch, and, before deciding under sub-section (2) of section seventeen of this Act on any such application, the Registrar shall consider the report.

(5) In respect of textile goods being piece-goods—

- (a) no mark consisting of a line heading alone shall be registrable as a trade mark ;
- (b) a line heading shall not be deemed to be adapted to distinguish or capable of distinguishing ;
- (c) the registration of a trade mark shall not give any exclusive right to the use of a line heading.

(6) There shall be kept at the Manchester Branch for the purposes of this Act a record called the Manchester Record wherein shall be entered

copies of all entries in the register relating to trade marks registered in respect of textile goods on or after the appointed day and, as soon as may be, copies of all entries relating to trade marks so registered before the appointed day and for the time being subsisting, and the Manchester Record shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed.

(7) The right of inspection conferred by the last foregoing sub-section shall extend to and include the right to inspect all applications whatsoever for registration that were made to the Manchester Branch, between the passing of the Trade Marks Registration Act, 1875, and the appointed day, in respect of cotton goods, whether registered, refused, lapsed, expired, withdrawn, abandoned, cancelled or pending.

(8) Refused marks which, immediately before the appointed day, were included in the collection of refused marks kept under rules one hundred and twelve to one hundred and sixteen of the Trade Marks Rules, 1920, and are at the time of the application for the registration of a trade mark included in that collection under the rules shall be treated for the purposes of sub-sections (1) and (2) of section twelve of this Act, but for no other purpose, as if they had been registered trade marks.

(9) Before making any rule, or prescribing any form, that is to deal specially with trade marks registered or proposed to be registered in respect of textile goods other than clothing, the Board of Trade shall send a draft thereof to the Trade and Merchandise Marks Committee of the Manchester Chamber of Commerce, and shall, if the said committee so request, give them an opportunity of being heard.

(10) The Registrar, or the Keeper of the Manchester Branch, may consult the said committee where it appears to him to be expedient so to do with respect to any circumstances peculiar to the cotton trade arising on an application to register a trade mark in respect of textile goods other than clothing.

(11) A certificate purporting to be under the hand of the Keeper of the Manchester Branch as to any copy entered in the Manchester Record of an entry in the register shall be *prima facie* evidence of the entry having been made in the register and of the contents thereof.

(12) The Court of Chancery of the County Palatine of Lancaster shall, with respect to any action or other proceeding in relation to a trade mark registered or proposed to be registered pursuant to an application sent to the Manchester Branch, where the registered proprietor or the proposed registered proprietor is within, or submits to, the jurisdiction of that Court, have the like jurisdiction under this Act as His Majesty's High Court of Justice in England, and the expression "the Court" in this Act shall be construed and have effect accordingly :

Provided that every decision of the Court of Chancery of the County Palatine of Lancaster in pursuance of this sub-section shall be subject to the like appeal as decisions of that Court in other cases.



## GENERAL AND MISCELLANEOUS.

*Rules and fees.*

Power of  
Board of  
Trade to  
make rules.

**40.** (1) The Board of Trade may from time to time make such rules, prescribe such forms and generally do such things as they think expedient—

- (a) for regulating the practice under this Act, including the service of documents ;
- (b) for classifying goods for the purposes of registration of trade marks ;
- (c) for making or requiring duplicates of trade marks and other documents ;
- (d) for securing and regulating the publishing and selling or distributing, in such manner as the Board of Trade think fit, of copies of trade marks and other documents ;
- (e) generally, for regulating the business of the Patent Office in relation to trade marks and all things by this Act placed under the direction or control of the Registrar or of the Board of Trade.

(2) Rules made under this Act shall, while in force, be of the same effect as if they were contained in this Act.

(3) Before making any rules under this Act, the Board of Trade shall publish notice of their intention to make the rules and of the place where copies of the draft rules may be obtained, in such manner as the Board consider most expedient so as to enable persons affected to make representations to the Board before the rules are finally settled.

(4) Any rules so made shall be forthwith advertised twice in the Trade Marks Journal, and shall be laid before both Houses of Parliament, if Parliament be in session at the time of the making thereof, or, if not, as soon as practicable after the beginning of the then next session of Parliament.

(5) If either House of Parliament, within the next forty days after any rules have been so laid before it, resolves that the rules or any of them ought to be annulled, the rule or rules shall thenceforth be of no effect, but without prejudice to the validity of anything previously done thereunder or to the making of any new rule or rules.

Fees.

**41.** There shall be paid in respect of applications and registration and other matters under this Act such fees as may be, with the sanction of the Treasury, prescribed by the Board of Trade.

*Powers and duties of Registrar.*

Preliminary  
advice by  
Registrar as  
to distinctiveness.

**42.** (1) The power to give to a person who proposes to apply for the registration of a trade mark in Part A or Part B of the register advice as to whether the trade mark appears to the Registrar *prima facie* to be inherently adapted to distinguish, or capable of distinguishing, as the case may be, shall be a function of the Registrar under this Act.

(2) Any such person who is desirous of obtaining such advice must make application to the Registrar therefor in the prescribed manner.

(3) If on an application for the registration of a trade mark as to which the Registrar has given advice as aforesaid in the affirmative, made within three months after the advice is given, the Registrar, after further investigation or consideration, gives notice to the applicant of objection on the ground that the trade mark is not adapted to distinguish, or capable of distinguishing, as the case may be, the applicant shall be entitled, on giving notice of withdrawal of the application within the prescribed period, to have repaid to him any fee paid on the filing of the application.

43. Where any discretionary or other power is given to the Registrar by this Act or the rules, he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving to the applicant or registered proprietor an opportunity of being heard.

Hearing before exercise of Registrar's discretion.

44. In all proceedings before the Registrar under this Act, the Registrar shall have power to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid, and any such order may, by leave of the Court or a judge thereof, be enforced in the same manner as a judgment or order of the Court to the same effect.

Power of Registrar to award costs.

45. The Comptroller-General of Patents, Designs and Trade Marks shall, in his annual report on the execution by or under him of the Patents and Designs Act, 1907, and acts amending that Act, include a report respecting the execution by or under him of this Act as if it formed a part of or was included in those Acts.

Annual reports of Registrar.

#### *Legal proceedings and appeals.*

46. In all legal proceedings relating to a registered trade mark (including applications under section thirty-two of this Act) the fact that a person is registered as proprietor of the trade mark shall be *prima facie* evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof.

Registration to be *prima facie* evidence of validity.

47. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of the trade mark, the Court may certify to that effect, and if it so certifies then in any subsequent legal proceeding in which the validity of the registration comes into question the proprietor of the trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges and expenses as between solicitor and client, unless in the subsequent proceeding the Court certifies that he ought not to have them.

Certificate of validity.

48. (1) In all proceedings before the Court under this Act the costs of the Registrar shall be in the discretion of the Court, but, in any proceedings in England or Northern Ireland, the Registrar shall not, except in accordance with the provisions of sub-section (2) of this section in a case in which he has

Costs of Registrar in proceedings before Court, and payment of costs by Registrar.

appeared in the proceedings, be ordered to pay the costs of any other of the parties.

(2) Where the Registrar appears in any proceedings before the Court in England or Northern Ireland under this Act, section seven of the Administration of Justice (Miscellaneous Provisions) Act, 1933, or any corresponding enactment which may be passed by the Parliament of Northern Ireland, as the case may be, shall have effect as it has effect in relation to other proceedings to which the Crown is a party in a court having the power to award costs in cases between subjects.

Trade usage,  
etc., to be  
considered.

**49.** In any action or proceeding relating to a trade mark or trade name, the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or trade name or get-up legitimately used by other persons.

Registrar's  
appearance  
in proceed-  
ings involving  
rectification.

**50.** (1) In any legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court.

(2) Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing, signed by him, giving particulars of proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting it or of the practice of the Patent Office in like cases or of such other matters relevant to the issues, and within his knowledge as Registrar, as he thinks fit, and the statement shall be deemed to form part of the evidence in the proceeding.

Court's  
power to  
review  
Registrar's  
decision.

**51.** The Court, in dealing with any question of the rectification of the register (including all applications under the provisions of section thirty-two of this Act), shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

Discretion  
of Court in  
appeals.

**52.** In any appeal from a decision of the Registrar to the Court under this Act, the Court shall have and exercise the same discretionary powers as under this Act are conferred upon the Registrar.

Procedure  
on appeal  
to Board of  
Trade.

**53.** Where under this Act an appeal is made to the Board of Trade, the Board of Trade may, if they think fit, refer the appeal to the Court in lieu of hearing and deciding it themselves, but, unless the Board so refer the appeal, it shall be heard and decided by the Board, and the decision of the Board shall be final.

Procedure  
in cases of  
option to  
apply to  
Court or  
Registrar.

**54.** Where under any of the foregoing provisions of this Act an applicant has an option to make an application either to the Court or to the Registrar—

(a) if an action concerning the trade mark in question is pending, the application must be made to the Court ;

(b) if in any other case the application is made to the Registrar, he may, at any stage of the proceedings, refer the application to the Court, or he may, after hearing the parties, determine the question between them, subject to appeal to the court.

*Evidence.*

55. In any proceeding under this Act before the Board of Trade or the Registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which the tribunal thinks it right so to do, the tribunal may take evidence *viva voce* in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

Mode of giving evidence.

In case any part of the evidence is taken *viva voce*, the Board of Trade or the Registrar shall, in respect of requiring the attendance of witnesses and taking evidence on oath, be in the same position in all respects as an official referee of the Supreme Court.

56. (1) All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or an under-secretary or an assistant secretary of the Board, or by any person authorised in that behalf by the President of the Board, shall be received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shown.

Evidence of orders, etc., of Board of Trade.

(2) A certificate, signed by the President of the Board of Trade, that any order made or act done in the order or act of the Board, shall be conclusive evidence of the fact so certified.

57. (1) A printed or written copy of any entry in the register, purporting to be certified by the Registrar and sealed with the seal of the Patent Office, shall be admitted in evidence in all courts, and in all proceedings, without further proof or production of the original.

Evidence of entries in register.

(2) Any person requiring such a certified copy as aforesaid shall be entitled to obtain it on payment of the prescribed fee.

58. A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

Evidence of things done by Registrar.

*Offences and restraint of use of Royal Arms.*

59. (1) If any person makes or causes to be made a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanour.

Falsification of entries in register a misdemeanour.

(2) In the Isle of Man the punishment for an offence under this section shall be imprisonment for any term not exceeding two years, with or without hard labour and with or without a fine not exceeding one hundred pounds, at the discretion of the court.

Fine for  
falsely  
representing  
a trade  
mark as  
registered.

**60.** (1) Any person who makes a representation—

- (a) with respect to a mark not being a registered trade mark, to the effect that it is a registered trade mark ; or
- (b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark, to the effect that it is so registered ; or
- (c) to the effect that a registered trade mark is registered in respect of any goods in respect of which it is not registered ; or
- (d) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations entered on the register, the registration does not give that right ;

shall be liable on summary conviction to a fine not exceeding five pounds.

(2) For the purposes of this section, the use in the United Kingdom in relation to a trade mark of the word “registered”, or of any other word referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except—

- (a) where that word is used in physical association with other words delineated in characters at least as large as those in which that word is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside the United Kingdom, being a country under the law of which the registration referred to is in fact in force ;
- (b) where that word (being a word other than the word “registered”) is of itself such as to indicate that the reference is to such registration as last aforesaid ; or
- (c) where that word is used in relation to a mark registered as a trade mark under the law of a country outside the United Kingdom and in relation to goods to be exported to that country.

(3) An offence under this section committed in the Isle of Man may be prosecuted, and any fine in respect thereof recovered, at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

Restraint  
of use of  
Royal Arms,  
etc.

**61.** If any person, without the authority of His Majesty, uses, in connection with any trade, business, calling or profession, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or if any person, without the authority of His Majesty or of a member of the Royal Family, uses, in connection with any trade, business, calling or profession, any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by, or supplies goods to, His Majesty or such member of the Royal Family, he may, at the suit of any person who is authorised to use such arms or such device,

emblem or title, or is authorised by the Lord Chamberlain to take proceedings in that behalf, be restrained by injunction from continuing so to use the same :

Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem or title to continue to use such trade mark.

*Miscellaneous.*

**62.** The use of a registered trade mark in relation to goods between which and the person using it any form of connection in the course of trade subsists shall not be deemed to be likely to cause deception or confusion on the ground only that the trade mark has been, or is, used in relation to goods between which and that person or a predecessor in title of his a different form of connection in the course of trade subsisted or subsists.

Change of form of trade connection not to be deemed to cause deception.

**63.** Where the relations between two or more persons interested in a trade mark are such that no one of them is entitled as between himself and the other or others of them to use it except—

Jointly owned trade marks.

(a) on behalf of both or all of them, or

(b) in relation to an article with which both or all of them are connected in the course of trade,

those persons may be registered as joint proprietors of the trade mark, and this Act shall have effect in relation to any rights to the use of the trade mark vested in those persons as if those rights had been vested in a single person.

Subject as aforesaid, nothing in this Act shall authorise the registration of two or more persons who use a trade mark independently, or propose so to use it, as joint proprietors thereof.

**64.** (1) There shall not be entered in the register any notice of any trust express, implied or constructive, nor shall any such notice be receivable by the Registrar.

Trusts and equities.

(2) Subject to the provisions of this Act, equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

**65.** Where by this Act any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, the act may under and in accordance with the rules, or in particular cases by special leave of the Board of Trade, be done by or to an agent of that person duly authorised in the prescribed manner.

Recognition of agents.

**66.** (1) The provisions of this Act conferring a special jurisdiction on the Court as defined by this Act shall not, except so far as the jurisdiction extends, affect the jurisdiction of any court in Scotland or Northern Ireland in any proceedings relating to trade marks ; and with reference to any such proceedings in Scotland the expression “ the Court ” means the Court of Session and with reference to any such proceedings in Northern Ireland

Saving for jurisdiction of courts in Scotland, Northern Ireland and Isle of Man.

the expression "the Court" means the High Court of Justice in Northern Ireland.

(2) Nothing in this Act shall affect the jurisdiction of the courts in the Isle of Man in proceedings for infringement or in any action or proceeding respecting a trade mark competent to those courts.

Exercise  
of powers  
of Board of  
Trade.

67. All things required or authorised under this Act to be done by, to or before the Board of Trade may be done, to or before the President or a secretary or an under-secretary or an assistant secretary of the Board or any person authorised in that behalf by the President of the Board.

*Supplemental.*

Interpreta-  
tion.

68. (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say :—

"the appointed day" has the meaning assigned to it by section seventy-one of this Act ;

"assignment" means assignment by act of the parties concerned ;

"the Court" means (subject to provisions relating to Scotland, Northern Ireland or the Isle of Man) His Majesty's High Court of Justice in England ;

"limitations" means any limitations of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode of use, as to use in relation to goods to be sold, or otherwise traded in, in any place within the United Kingdom, or as to use in relation to goods to be exported to any market outside the United Kingdom ;

"mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof ;

"permitted use" has the meaning assigned to it by sub-section (1) of section twenty-eight of this Act ;

"prescribed" means, in relation to proceedings before the Court, prescribed by rules of court, and, in other cases, prescribed by this Act or the rules ;

"the register" means the register of trade marks kept under this Act ;

"registered trade mark" means a trade mark that is actually on the register ;

"registered user" means a person who is for the time being registered as such under section twenty-eight of this Act ;

"the Registrar" means the Comptroller-General of Patents, Designs and Trade Marks ;

“the rules” means rules made by the Board of Trade under section thirty-six or section forty of this Act ;

“trade mark” means, except in relation to a certification trade mark, a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person, and means, in relation to a certification trade mark, a mark registered or deemed to have been registered under section thirty-seven of this Act ;

“transmission” means transmission by operation of law, devolution on the personal representative of a deceased person, and any other mode of transfer not being assignment ;

“United Kingdom” includes the Isle of Man.

(2) References in this Act to the use of a mark shall be construed as references to the use of a printed or other visual representation of the mark, and references therein to the use of a mark in relation to goods shall be construed as references to the use thereof upon, or in physical or other relation to, goods.

(3) In the application of this Act to Scotland, the expressions “injunction,” “plaintiff” and “defendant” mean respectively “interdict,” “pursuer” and “defender.”

**69.** The transitional provisions set out in the Third Schedule to this Act shall have effect with respect to the matters therein mentioned respectively. Transitional provisions.

**70.** (1) The enactments set out in the Fourth Schedule<sup>1</sup> to this Act are hereby repealed to the extent specified in the third column of that Schedule. Repeal and savings.

(2) Nothing in this Act shall affect any order, rule, regulation or requirement made, table of fees or certificate issued, notice, decision, determination, direction or approval given, application made, or thing done, under any enactment repealed by this Act ; and every such order, rule, regulation, requirement, table of fees, certificate, notice, decision, determination, direction, approval, application or thing shall, if in force at the commencement of this Act, continue in force and shall, so far as it could have been made, issued, given or done under this Act, have effect as if made, issued, given or done under the corresponding enactment of this Act.

(3) Any document referring to any enactment repealed by this Act shall be construed as referring to the corresponding enactment of this Act.

(4) Nothing in this section shall be taken to prejudice the provisions of section thirty-eight of the Interpretation Act, 1889.

**71.** (1) This Act may be cited as the Trade Marks Act, 1938.

Short title,  
commence-  
ment and  
extent.

<sup>1</sup> Not reprinted.



(2) This Act shall come into operation on the date<sup>1</sup> fixed by order made under sub-section (5) of section thirty-three of the Trade Marks (Amendment) Act, 1937, for the coming into operation of that Act (in this Act referred to as "the appointed day"), immediately after the coming into operation of that Act.

(3) It is hereby declared that this Act extends to Northern Ireland.

(4) This Act shall extend to the Isle of Man.

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## FIRST SCHEDULE.

(Section 37.)

### CERTIFICATION TRADE MARKS.

1. (1) An application for the registration of a mark under section thirty-seven of this Act must be made to the Registrar in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof.

(2) The provisions of sub-section (2) and of sub-sections (4) to (7) of section seventeen of this Act shall have effect in relation to an application under the said section thirty-seven as they have effect in relation to an application under sub-section (1) of the said section seventeen, except that for references therein to acceptance of an application there shall be substituted references to authorisation to proceed with the application.

(3) In dealing under the said provisions with an application under the said section thirty-seven the tribunal shall have regard to the like considerations, so far as relevant, as if the application were an application under section seventeen of this Act and to any other considerations (not being matters within the competence of the Board of Trade under sub-paragraph (5) of this paragraph) relevant to applications under the said section thirty-seven, including the desirability of securing that a certification trade mark shall comprise some indication that it is such a trade mark.

(4) An applicant for the registration of a mark under the said section thirty-seven shall transmit to the Registrar draft regulations for governing the use thereof at such time before the decision of the Registrar on the application as he may require in order to enable him to consider the draft, and the Registrar shall report thereon to the Board of Trade.

(5) When authorisation to proceed with an application has been given, the Board of Trade shall consider the application with regard to the following matters, that is to say :

- (a) whether the applicant is competent to certify the goods in respect of which the mark is to be registered ;
- (b) whether the draft regulations are satisfactory ; and

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<sup>1</sup> The 27th July, 1938, *see* Statutory Rules and Orders, 1938 (No. 657), Vol. II, p. 3256.

- (c) whether in all the circumstances the registration applied for would be to the public advantage ;

and may either—

- (i) direct that the application shall not be accepted ; or
- (ii) direct the Registrar to accept the application, and approve the regulations, either without modification and unconditionally or subject to any conditions or limitations, or to any amendments or modifications of the application or of the regulations, which they think requisite having regard to any of the matters aforesaid ;

but, except in the case of a direction for acceptance and approval without modification and unconditionally, the Board shall not decide the matter without giving to the applicant an opportunity of being heard :

Provided that the Board may, at the request of the applicant made with the concurrence of the Registrar, consider the application with regard to any of the matters aforesaid before authorisation to proceed with the application has been given, so however that the Board shall be at liberty to reconsider any matter on which they have given a decision under this proviso if any amendment or modification is thereafter made in the application or in the draft regulations.

2. (1) When an application has been accepted, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner, and the provisions of sub-sections (2) to (11) of section eighteen of this Act shall have effect in relation to the registration of the mark as if the application had been an application under section seventeen of this Act :

Provided that, in deciding under the said provisions, the tribunal shall have regard only to the considerations referred to in sub-paragraph (3) of the last foregoing paragraph, and a decision under the said provisions in favour of the applicant shall be conditional on the determination in his favour by the Board of Trade under sub-paragraph (2) of this paragraph of any opposition relating to any of the matters referred to in sub-paragraph (5) of the last foregoing paragraph.

(2) When notice of opposition is given relating to any of the matters referred to in sub-paragraph (5) of the last foregoing paragraph, the Board of Trade shall, after hearing the parties, if so required, and considering any evidence, decide whether, and subject to what conditions or limitations, or amendments or modifications of the application or of the regulations, if any, registration is, having regard to those matters, to be permitted.

3. (1) The regulations deposited in respect of a certification trade mark may, on the application of the registered proprietor, be altered by the Registrar, with the consent of the Board of Trade.

(2) The Board of Trade may cause an application for their consent to be advertised in any case where it appears to the Board that it is expedient

so to do, and, where the Board cause an application to be advertised, if within the prescribed time from the date of the advertisement any person gives notice to the Board of opposition to the application, the Board shall not decide the matter without giving the parties an opportunity of being heard.

4. (1) The Board of Trade may, on the application in the prescribed manner of any person aggrieved, or on the application of the Registrar, make such order as they think fit for expunging or varying any entry in the register relating to a certification trade mark, or for varying the deposited regulations, on the ground—

- (a) that the proprietor is no longer competent, in the case of any of the goods in respect of which the trade mark is registered, to certify those goods ;
- (b) that the proprietor has failed to observe a provision of the deposited regulations to be observed on his part ;
- (c) that it is no longer to the public advantage that the trade mark should be registered ; or
- (d) that it is requisite for the public advantage that, if the trade mark remains registered, the regulations should be varied ;

and neither the Court nor the Registrar shall have any jurisdiction to make an order under section thirty-two of this Act on any of those grounds.

(2) The Registrar shall rectify the register and the deposited regulations in such manner as may be requisite for giving effect to an order made under the foregoing sub-paragraph.

5. Notwithstanding anything in section forty-four of this Act, the Registrar shall not have any jurisdiction to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or to authorise the use of the trade mark.

6. The following provisions of this Act shall have effect in relation to a certification trade mark, that is to say, section four, section six, section nine, sections seventeen and eighteen (except as expressly applied by this Schedule), sub-sections (4) to (8) of section twenty-two, sections twenty-six to twenty-nine, section sixty-two, and any provisions the operation of which is limited by the terms thereof to registration in Part B of the Registrar.

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## SECOND SCHEDULE.

(Section 38.)

### SHEFFIELD MARKS.

1. The Cutlers' Company shall continue to keep at Sheffield the register of trade marks (in this Schedule called "the Sheffield register") kept by them immediately before the appointed day, and, save as otherwise provided

by this Schedule, the Sheffield register shall for all purposes form part of the register.

2. An application by a person carrying on business in Hallamshire, or within six miles thereof, for the registration of a trade mark in respect of metal goods may be made either to the Registrar or to the Cutlers' Company, at the option of the applicant.

3. An application for the registration of a trade mark made to the Cutlers' Company shall be notified to the Registrar in the prescribed manner, and the Cutlers' Company shall not proceed with such an application until authorised so to do by the Registrar.

4. The Registrar shall consider an application notified to him as aforesaid and shall either authorise the Cutlers' Company to proceed therewith or, if it appears to him that there is any objection to the application, shall give notice of his objection to the Cutlers' Company, who shall communicate it to the applicant.

5. Within the prescribed time after receipt of a notice of objection under the last foregoing paragraph, the applicant may submit to the Cutlers' Company either orally or in writing arguments against, or proposals for meeting, the objection, and the Cutlers' Company shall notify to the Registrar any arguments or proposals so submitted to them together with any observations that they may desire to make thereon.

6. The Registrar shall consider any arguments, proposals or observations notified to him as aforesaid and shall, if so required by an applicant who has submitted arguments or proposals as aforesaid, give the applicant an opportunity of being heard by him, and may refuse authorisation to proceed with the application or may authorise the Cutlers' Company to proceed therewith either without modification and unconditionally or subject to such conditions, amendments or modifications or to such limitations, if any, as he may think right.

7. Where the Registrar refuses authorisation to proceed with an application, or authorises the Cutlers' Company to proceed therewith subject as aforesaid, the provisions of sub-sections (4) to (6) of section seventeen of this Act shall have effect in relation to the refusal or conditional authorisation as they have effect in relation to a refusal to accept, or a conditional acceptance of, an application, except that for references therein to acceptance of the application there shall be substituted references to authorisation to the Cutlers' Company to proceed with the application.

8. Upon the registration of a trade mark in the Sheffield register, the Cutlers' Company shall give notice thereof to the Registrar, who shall thereupon enter the trade mark in the register, and such registration shall bear date as of the day of the application to the Cutlers' Company and have the same effect as if the application had been made to the Registrar on that day.

9. The provisions of this Act and of the rules with respect to the registration of trade marks, and all matters relating thereto, shall, subject to the

provisions of this Schedule (and notwithstanding anything in any Act relating to the Cutlers' Company), apply to the registration of trade marks in respect of metal goods by the Cutlers' Company and to all matters relating thereto, and this Act and the rules shall, so far as applicable, be construed accordingly with the substitution of the Cutlers' Company, the office of the Cutlers' Company, and the Sheffield register, for the Registrar, the Patent Office, and the register respectively, and notice of every entry, cancellation, or correction made in the Sheffield register shall be given to the Registrar by the Cutlers' Company :

Provided that anything that by virtue of this Schedule is required or authorised to be done by, before or in relation to the Cutlers' Company or at their office may, with the consent of the party or parties concerned, be done by, before or in relation to the Registrar or at the Patent Office, as the case may be.

10. When the Registrar receives an application for the registration of a trade mark in respect of metal goods, he shall in the prescribed manner notify the application and proceedings thereon to the Cutlers' Company.

11. Any person aggrieved by a decision of the Cutlers' Company in respect of anything done or omitted under this Act may, in the prescribed manner, appeal to the Court or, in a case in which, if the decision had been a decision of the Registrar, the person aggrieved would have had an option under this Act of appealing to the Board of Trade, to the Court or the Board at the option of the appellant.

12. (1) For the purposes of this Schedule the expression "metal goods" means all metals, whether wrought, unwrought, or partly wrought, and all goods which are comprised in any of such classes as may be prescribed as being classes which refer predominantly to metal goods, and are goods composed wholly or principally of any metal; and for purposes of determining whether any goods are goods principally of any metal regard shall be had to the importance and nature of the metal part or parts of the goods having regard to the purposes for which the goods are adapted.

(2) Any question arising in connection with an application made to the Cutlers' Company for the registration of a trade mark, as to whether the goods in respect of which the trade mark is proposed to be registered are metal goods, shall be referred to and determined by the Registrar, whose decision shall be final.

(3) The validity of the registration by the Cutlers' Company of a trade mark shall not be questioned on the ground only that the goods in respect of which it is so registered are not metal goods.

13. A certificate purporting to be under the hand of the master of the Cutlers' Company as to any entry, matter or thing that the Cutlers' Company are authorised by this Schedule or the rules to make or do shall be *prima facie* evidence of the entry having been made and of the contents thereof and of the matter or thing having been done or not done.

## THIRD SCHEDULE.

(Section 69.)

## TRANSITIONAL PROVISIONS.

*Validity of registrations under previous Acts.*

1. (1) Subject to the provisions of this paragraph and of section thirteen of this Act, the validity of the original entry of a trade mark on the register of trade marks existing at the commencement of the Trade Marks Act, 1905, or on any of the registers of trade marks kept under previous Acts that were deemed part of the same record as the last-mentioned register, shall be determined in accordance with the Acts in force at the date of such entry, and any such trade mark shall retain its original date, but for all other purposes it shall be deemed to have been registered under the Trade Marks Act, 1905.

(2) No trade mark which was on the register at the commencement of the Trade Marks Act, 1905, and which under that Act was then a registrable trade mark, shall be removed from the register on the ground that it was not registrable under the Acts in force at the date of its registration.

(3) No trade mark which was on the register at the commencement of the Trade Marks (Amendment) Act, 1937, and which, having regard to any amendment by that Act of the Trade Marks Act, 1905, or of the Trade Marks Act, 1919, whether as respects limitations that might be imposed on registration or as respects any other matter, was then a registrable trade mark under the Trade Marks Act, 1905 to 1937, shall be removed from the register on the ground that it was not registrable under the Acts in force at the date of its registration.

(4) Nothing in the Trade Marks (Amendment) Act, 1937, shall be taken to have invalidated the original registration of a trade mark that immediately before the commencement of that Act was validly on the register.

(5) Nothing in section thirty-six of the Trade Marks Act, 1905, or on the Trade Marks (Amendment) Act, 1937, shall be construed as having subjected any person to any liability in respect of any act or thing done before the commencement of those Acts respectively to which he would not have been subject under the Acts then in force.

*Assignments and transmissions (before appointed day) giving exclusive rights in different places in the United Kingdom.*

2. (1) The validity of an assignment or transmission of a trade mark effected or claimed to have been effected before the appointed day, in any such case as is mentioned in sub-section (6) of section twenty-two of this Act, shall be determined as if the provisions contained in sub-sections (1) to (5) of that section had not been enacted :

Provided that, on application made in the prescribed manner within two years from the commencement of this Act, by a person who claims that an assignment or transmission of a registered trade mark to him or to a predecessor in title of his has been so effected, the Registrar shall have the like jurisdiction as under the proviso to sub-section (6) of section twenty-two of this Act, and an assignment or transmission approved by him shall not be deemed to have been invalid on the ground of the subsistence of such rights as are mentioned in the said sub-section (6) or on the ground that the assignment or transmission was effected otherwise than in connection with the goodwill of a business or was effected in respect of some (but not all) of the goods in respect of which the trade mark was registered, if application for the registration under section twenty-five of this Act of the title of the person becoming entitled is made within six months from the date on which the approval is given, or was made before that date.

(2) Any decision of the Registrar under this paragraph shall be subject to appeal to the Court.

*Saving as to retrospective provisions relating to assignments and transmissions.*

3. The retrospective provisions contained in section twenty-two of this Act, and in the last foregoing paragraph, shall have effect without prejudice to any determination of a competent tribunal that was made before the appointed day, or to the determination of any appeal from a determination so made, or to any title acquired for valuable consideration before the appointed day.

*Association of trade marks assignable or transmissible as a whole only under the Trade Marks Act, 1919.*

4. Where immediately before the appointed day a trade mark was registered in Part B of the register subject to a condition rendering it assignable or transmissible only as a whole with another trade mark registered in the name of the same proprietor or with two or more other trade marks so registered, and not separately, the trade marks shall be deemed to be associated trade marks, and the entries in the register relating thereto may be amended accordingly.

*Previous use of a trade mark by person becoming registered user on application made within one year of appointed day.*

5. Where a person is registered as a registered user of a trade mark on an application made within one year from the commencement of this Act, sub-section (2) of section twenty-eight of this Act shall have effect in relation to any previous use (whether before or after the commencement of this Act) of the trade mark by that person, being use in relation to the goods in respect of which he is registered and, where he is registered subject to conditions or restrictions, being use such as to comply substantially therewith, as if such previous use had been permitted use.

*Use of trade mark for export trade before appointed day.*

6. Section thirty-one of this Act shall be deemed to have had effect in relation to an act done before the appointed day as it has effect in relation to an act done after the commencement of this Act, without prejudice, however, to any determination of a competent tribunal which was made before the appointed day, or to the determination of any appeal from a determination so made.

*Trade marks registered under section sixty-two of the Trade Marks Act, 1905, to be deemed to have been registered under section thirty-seven of this Act.*

7. Section thirty-seven of this Act shall have effect, in relation to a trade mark that immediately before the appointed day was on the register by virtue of section sixty-two of the Trade Marks Act, 1905, as if the said section thirty-seven had been in force at the date of the registration of the trade mark and it had been registered under that section, subject however to the following modifications, that is to say :—

- (a) the proviso to sub-section (1) of the said section thirty-seven shall not apply :
- (b) in a case in which regulations for governing the use of the trade mark are deposited at the Patent Office at the commencement of this Act, those regulations shall be deemed to have been deposited under the said section thirty-seven ;
- (c) in a case in which no such regulations are deposited at the commencement of this Act, the proprietor shall be at liberty, or may be required by the Board of Trade as a condition of the continuance of the registration, to deposit at any time thereafter such regulations as the Board may permit or require ; and
- (d) in a case in which no such regulations are for the time being deposited, the said section thirty-seven shall have effect as if references therein, and in the First Schedule to this Act, to the regulations had been omitted.

*Cotton marks registered before appointed day.*

8. No registration as of a date before the appointed day of a cotton mark as defined in section sixty-four of the Trade Marks Act, 1905, in respect of cotton piece goods or cotton yarn shall give any exclusive right to the use of any letter, numeral, line heading, or any combination thereof.

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<sup>1</sup> The Fourth Schedule is a repealing Schedule and has not been reprinted.





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